

# **RIGHT OF WAY MANUAL**

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**PRE-ACQUISITION (5-491.100)**  
**INITIAL PROGRAM DEVELOPMENT PROCESS (STATE TRANSPORTATION**  
**IMPROVEMENT PROGRAM) (5-491.101)**

### **101.1 BACKGROUND**

The passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991 created a new focus for federal aid for highways and transit. ISTEA created less of a federal presence in many transportation decisions. The diminished federal role results in more state/local authority and responsibility for these decisions.

All projects are programmed using the State Transportation Improvement Program (STIP) project selection process. This document is a comprehensive three year schedule of planned transportation, principally highway and transit projects, in Minnesota. The process includes flexible sources of funding, predictable levels of funding and cooperation among traditional and non-traditional partners. The objective of the process is to develop a new, integrated procedure for making federal investment decisions in Minnesota. The process is driven by a declaration of state goals and objectives. Statewide investment goals have been drawn from statewide planning studies and policies and analysis of previous programs. They are offered as an aid in determining areawide priorities. The transportation planning activities will be considered by the Areawide Transportation Partnerships (ATP) in developing investment priorities. Target regional funding is a means of determining an estimate of the funding available for the Regional Transportation Investment Program (RTIP). This Target funding helps the prioritization process. The partnership is aware of all sources of funding, including Federal Highway and Transit Funds, State Trunk Highway Funds, State-Aid Highway Funds and local funds. Funding for all modes is considered in the decision making process for balanced investment decisions promoting effective and efficient transportation.

### **101.2 POLICY**

The statewide goals and objectives, and unique transportation needs are analyzed and compared prior to the preparation of a draft STIP. Final adjustments are made to the STIP before its submittal to the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) approval.

Mn/DOT's Office of Investment Management (OIM) is responsible for managing the statewide project selection process. Once the projects have been selected, the Mn/DOT District Offices are responsible for the management of the regional portion of the STIP. The Districts are also responsible for managing changes in the list of projects together with the costs and changes in schedules which may occur. These changes are recorded in the project scheduling system (ARTEMIS).

The OIM will monitor the current STIP spending schedules using ARTEMIS and other tools to ensure that statewide spending is within the approved limits and available program revenue. They will also assign federal appropriation codes to projects and monitor availability of the project funds.

Each Mn/DOT District will estimate the R/W needs to cover all T.H. projects, with appropriate lead time for expenditures. A portion of the allotted state funds will be placed in an account which will still be managed by the Mn/DOT Office of Land Management. It will identify the A,B,C,D, regular R/W, the Interstate R/W, and the incidental R/W expenditures. This account will provide a statement which indicates the appropriation unit and number, the expenditures for the specific organization and a breakdown of these costs via an object code.

Project review conferences are held periodically to monitor the progress of the State Transportation Improvement Program (STIP) and recommend adjustments to the schedules as required. These conferences are attended by Central Office staff and District personnel.

### **101.3 PROCEDURE**

#### **Transportation Program Investment Committee**

1. Recommends approval of the State Transportation Improvement Program (STIP)

#### **Commissioner of Transportation**

2. Approves plan

#### **Office of Investment Management (OIM).**

3. Responsible for the management of the STIP/ARTEMIS.
4. Monitors the STIP spending schedules using ARTEMIS and other tools to ensure statewide spending is within authorized limits.
5. Assigns federal appropriation codes to projects and monitor the availability of project funds.
6. Responsible for advising and coordinating the (ARTEMIS) project scheduling system to Mn/DOT. Districts and other agencies.

#### **Director of Office of Land Management**

7. Refers STIP/ARTEMIS to Central Office Real Estate and Land Surveys Section for implementation.
8. Central Office Real Estate and Land Surveys Section forwards the STIP/ARTEMIS to the Project Coordination and Finance Unit for the initiation of a project file.

**PRE-ACQUISITION (5-491.100)**  
**CHARGE IDENTIFICATION NUMBERS (5-491.102)**

**102.1 POLICY**

The Transportation District Offices and Metro Division shall initiate all job numbers before charges are made to the project.

NOTE: Job numbers need to be established before requests for certificates of title are requested from the Central Office.

**102.2 PROCEDURE****District Artemis Coordinator**

1. Prepares Project Authorization Form (PAF).  
(Form MnDOT TP 00008-03) to obtain a job number.
2. Signs and forwards form to project liaison unit in Central Office.

**Project Liaison Unit in Central Office**

3. Reviews request for a job number and forwards to the Office of Transportation Research and Investment Management.

**Office of Investment Management**

4. Reviews job number request, signs PAF and forwards to the Office of Financial Management.

**Office of Financial Management**

5. Assigns a job number to the request, retains the white copy, forwards the yellow and blue copy to the district, forwards a xerox copy to the Project Coordination and Finance Unit.

**Project Coordination and Finance Unit**

6. Enters job number into ROWIS and files copy of the PAF.

**PRE-ACQUISITION (5-491.100)**  
**BASE MAPS (5-491.103)**

**103.1 POLICY**

After the project has been programmed for right of way acquisition, a determination must be made on the map to be used. On some minor reconstruction projects, where a specific centerline and width orders have been filed and recorded, the original right of way map can be used. Any alignment changes can be shown on the original right of way map and can be equated to the original stationing.

In general, a new right of way map is prepared for projects involving new locations and for projects involving extensive relocations and horizontal alignment changes or divided roadways.

**103.2 PROCEDURE**

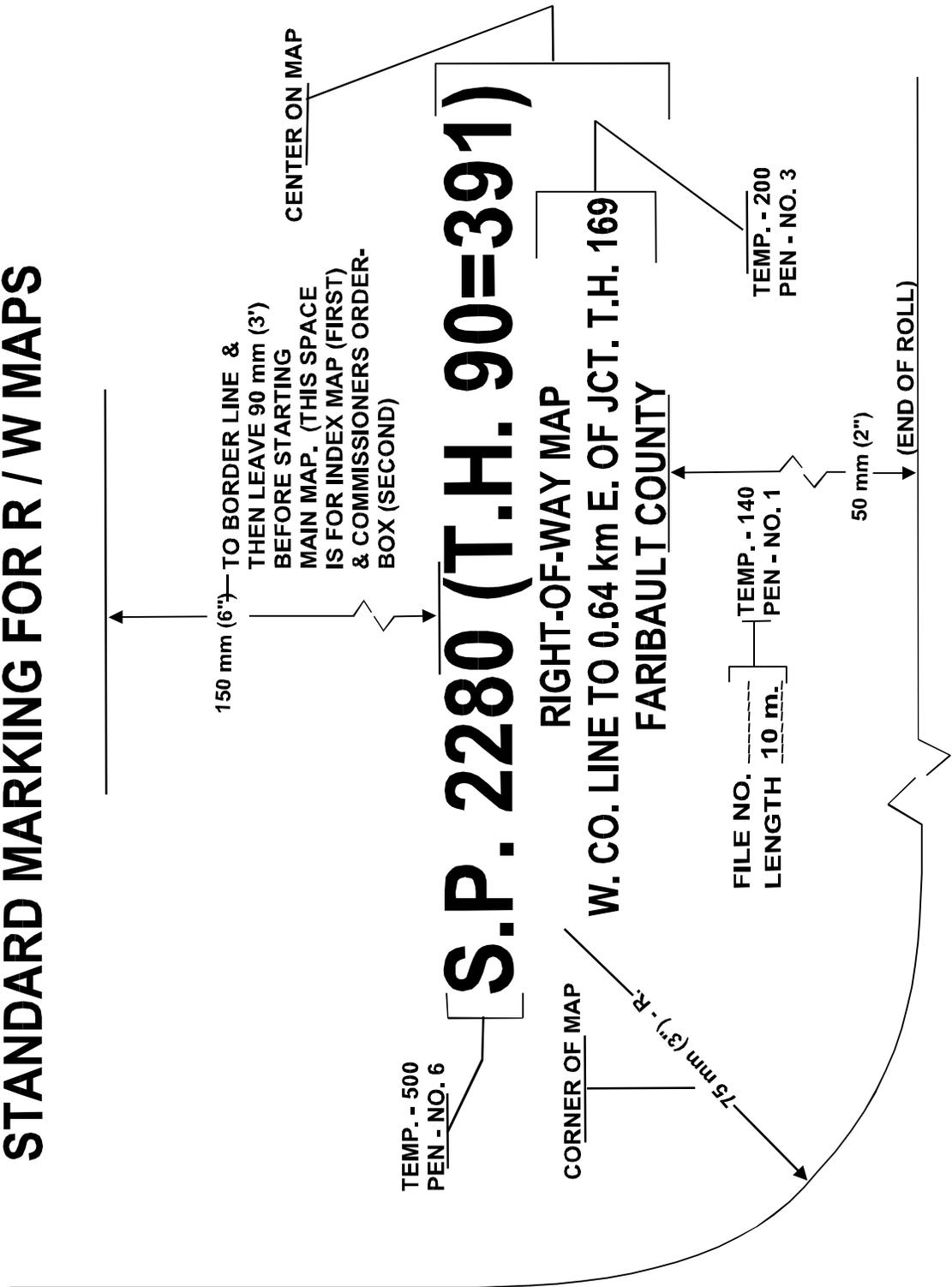
A planimetric base map is produced by the Photogrammetric Section in the Central Office on a Micro-Station CADD file. This base map shows all the natural and cultural features seen from aerial photos.

The computer (CADD) graphics file is sent to the District Survey Units where the topography is annotated and additional existing features from a field survey are added to the graphics file of the base map.

The mapping specifications, standard and development of this base map can be found in the Surveys Manual under Chapters 3, (Land Surveys) and 5, (Location Surveys). The base map will be used by many subsequent Mn/DOT customers. It is critical that it is produced to a high quality and that it is complete, uniform, and accurate in all aspects. This base map is the foundation for the development of all the specific use maps, including the right of way map explained in Section 5-491.107 of this manual.

NOTE: See Figure A 5-491.103 for standard marking of Right of Way maps.

# STANDARD MARKING FOR R / W MAPS



**PRE-ACQUISITION (5-491.100)**  
**CERTIFICATE OF TITLE (5-491.104)**

**104.1 POLICY**

The Legal and Real Estate Conveyance Unit of the Office of Land Management has the responsibility of furnishing certificates of title. To fulfill this responsibility, outside assignments may be made as necessary to private attorneys or to abstracters having contractor eligibility status.

A Certificate of Title (Form 2508) for each tract of land from which right of way will be acquired is required. Each tract is listed on a separate certificate on which the total description of ownership is shown as it appears on the records in the Office of the County Recorder or Registrar of Titles. The certificate shows the fee owner of record and also the record of ownership for the previous five years. All encumbrances of record against the property such as mortgages, liens, judgments, taxes and outstanding assessments appear on the certificate of title. The certificate must be signed by the attorney or abstractor.

**104.2 PROCEDURE****District Land Management/Right of Way Engineer**

1. Obtains a reproducible copy of the right of way map from original and;
  - a. Outlines (not shades) preliminary right of way in red.
  - b. Makes an estimated count of new titles to be searched.
2. Forwards map and estimated new title count (AKA District title work request) to Central Office Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

3. Reviews the title request and either:
  - a. Assigns the title work to unit staff attorneys or abstracters based on time availability.
  - or
  - b. Prepares and processes a contract with a private attorney or abstractor.
4. The attorney or abstractor enters required title information resulting from searching county records and returns the certificate of title to the Legal and Real Estate Conveyance Unit.
5. The Legal and Real Estate Conveyance Unit Supervisor reviews the certificate of title(s) and returns the certificate to the requesting district.

NOTE: Payment of private contractor title work is coordinated through the Legal and Real Estate Conveyance Unit which approves payment for services utilizing District Right of Way project funding sources.

### **104.3 CONTINUATION/CORRECTION OF TITLE PROCEDURE**

If a continuation/correction of a specific title is required utilize the above Certificate of Title procedures, except a map is not required as the titles themselves are sufficient for this work.

**PRE-ACQUISITION (5-491.100)**  
**BUILDING SURVEY (5-491.105)**

### 105.1 POLICY

The District Land Management/R/W Office will prepare a building survey for each building being acquired on the highway project. Two forms are used: the "Building Sketch" (Form TP-02527) and the Building Analysis (Form TP-02548). Together, these two forms provide space for showing floor plans, types of construction, materials, etc. Space is provided at the bottom of the building sketch to give basic information on any miscellaneous outbuildings.

A building survey will be made for each parcel having one or more buildings or other structures included in the acquisition area.

The building survey will be made up of the following:

- Building sketch sheet(s)
- Building analysis sheet(s)
- Photograph mounting sheet(s)

A completed building survey will serve as a reference in various Mn/DOT operations: design, appraisal, replacement housing supplement, leasing, salvage appraisal, demolition cost estimate, and building sales.

### 105.2 PROCEDURE

#### **District Land Management/Right of Way:**

1. Secure two prints of the project right of way map and note all buildings to be removed on each parcel.
2. At each site prepare the building survey sheets. (Information need not be typed in.) Photocopies of the Building Sketch and the Building Analysis sheets are commonly incorporated into the appraisal and the replacement housing supplement worksheets. Include additional comments, notations, and measurements which may be helpful later to those using the survey sheets. For example:
  - a. Give the distances from the top of the foundation wall down to the ground surface at the corners of the buildings. These distances may be used to estimate basement fill quantities.
  - b. Show any yard fixtures such as radio antenna towers, silos, etc.
  - c. Show location of septic tank and drain field.
  - d. Show location of well. Ask owner if details such as size and depth are known.
  - e. Show sidewalks, concrete and bituminous driveways, retaining walls, etc. and give dimensions.

- f. Show location of underground storage tanks, fill pipes and note what products the tanks were being used for.
  - g. Show areas where asbestos is present as determined by trained personnel. When uncertain, obtain a test from a licensed laboratory to verify the presence or absence of the material. The District Safety Administrator or the District Building Maintenance Supervisor may provide some guidance on this.
  - h. Show the outside measurements of structures and the inside dimensions of their rooms. (This will aid the Appraisal Unit and the Replacement Housing Supplement Unit.)
3. Take photographs: various views of the principal buildings and at least one view of any miscellaneous structures and outbuildings.
  4. Review the assembled building surveys for each parcel. Forward original (with photos) and two copies (without photos) to Central Office, Project Coordination and Finance Unit.

#### **Project Coordination and Finance Unit**

5. Log receipt of building surveys for each parcel. Distribute original set with photos to Property Management Unit. Distribute the two copies to the Appraisal Section.

**PRE-ACQUISITION (5-491.100)**  
**FIELD TITLE INVESTIGATION (5-491.106)**

**106.1 POLICY**

After the certificate of title is obtained a field title investigation is made of each parcel to obtain any additional interest in the property not shown on the title. The Real Estate Representative assigned to field title investigation is responsible for obtaining the names, mailing and residential addresses, all easement documents, both recorded and unrecorded, and nature of interest of all parties to the real property being acquired.

The Field Title Report (Form 25085) is completed months before the acquisition is commenced. Therefore, the Real Estate Representative must re-examine the field title report before acquisition is started to determine if changes have occurred.

**106.2 PROCEDURE****District Land Management/Right of Way Engineer**

1. Sends Certificates of Title (Form 2508) and a preliminary acquisition map of each project to the Real Estate Representative for verification of recorded titles and field investigation.

**District Real Estate Representative**

2. Studies the map and certificates of title to be familiar with the project. Enters data into the field notebook.
3. Enters County Assessors estimate of market value data for each parcel on the market data form:
  - ! Data includes the assessor's valuation of the subject property (land and improvements only) and on all contiguous property held by the parcel owner.
  - ! Tax data includes current taxes and type of outstanding special assessments, if any, together with name of agency levying special assessment.
  - ! Identify any special tax situation, such as "green acres" or exempt.
4. Verifies ownership and nature of interest of the fee owner, contract for deed vendee or other interests in the property by personal visit. Obtains copies of easement documents that will be affected by parcel. Secures ownership information by correspondence with parties out of state. Field title information requires the names and addresses of all occupants or businesses located in a subject property. Business entities must be identified as to type, such as corporation or partnership. When parties acting in a fiduciary manner are encountered, copies of instruments authorizing them to act must be obtained. Environmental problems, such as septic tanks, wells and petro spills, should be investigated and noted if found.
5. Prepares two copies of Field Title Report (Form 25085) with information obtained in Step 3.

6. Prepares one copy of record of transfer (lower portion Market Data form) with information obtained during visit with owners or claimants of interest and information from the certificate of title including ownership of each subject property for the past five years.
7. Sends all completed forms to District Land Management/Right of Way Engineer.

**District Land Management/Right of Way Engineer.**

8. Forwards original and one copy of each title certificate and field title report to Project Coordination and Finance Unit for filing.

**Project Coordination and Finance Unit**

9. Records receipt of title certificates, field title reports and right of way map and forwards to Legal Description and Commissioner's Orders Unit for preparation of descriptions.

**Legal Description and Commissioner's Order Unit**

10. Forwards one copy of each title certificate and field title report to Legal and Real Estate Conveyance Unit for preparation of office abstracts.

**Legal and Real Estate Conveyance Unit**

11. Returns completed office abstracts, certificates of title and field title reports to Legal Description and Commissioner's Orders Unit.

**PRE-ACQUISITION (5-491.100)**  
**DEVELOPMENT OF RIGHT OF WAY MAP (5-491.107)**

### 107.1 BACKGROUND

The base map is the foundation for the R/W work map. The District Survey Unit provides the base map in Microstation CADD format laying out all existing R/W, easements, etc. This chapter explains how to use this base map and develop the R/W map. The R/W work map is developed in the District Office CADD file of the base map for use in the preparation of descriptions, orders, appraisals, staff and Federal Highway Administration authorization , acquisition of R/W and related R/W activities.

NOTE: Also refer to the CADD Standards Manual for more explicit details and standards for map development.

The CADD right of way map file shows detailed property information including:

- ! limits of proposed right of way acquisition
- ! land lines
- ! existing R/W
- ! full and true valuation
- ! property ownership and parcel data for right of way
- ! temporary easement
- ! waste and disposal
- ! channel changes
- ! offtake ditches
- ! borrow pits
- ! roadside parks and rest areas
- ! stockpile site
- ! parks
- ! wetlands
- ! transit sites
- ! flood plain
- ! ponding
- ! trails
- ! relocation of county and judicial ditches
- ! maintenance building sites
- ! headquarter sites

### 107.2 INFORMATION TO DEVELOP THE RIGHT OF WAY MAP

1. The files that form the base map must be accessible from surveys. These files are usually in file names with the following extensions:
  - a) pln/apl ( planimetric/annotated planimetric)
  - b) top/atp (topographic/annotated topographic)
  - c) mtp/amt ( metric topographic/annotated metric topographic)
  - d) fip/mfp ( field input/metric field input)

These files should include all of the topography and alignments as well as all necessary property lines, existing R/W, easements, and public land corners.

2. The second key file is the design reference file which includes all of the necessary construction limits and geometrics.
3. When working in an area where a CADD file already exists, that file should be used as a reference file. If the file is a recent CADD file, the file should be developed as the work map, incorporating all R/W changes. (Creating a new map is unnecessary if there is an existing map which will work).

### 107.3 STANDARDS

1. All symbology shall conform to the MNDOT CADD Data Standards Manual. The R/W cell library shall be used for the development of the R/W map. All level assignments, symbology and cell libraries shall conform to the CADD Standards Manual which identifies the standard R/W pen weights and color tables that shall be used in all cases except exhibits. This cell library specified in the manual may be found on the Office of Land Management server.
2. When creating a new CADD file for the project the file name shall be "district/division"; & "R" & "control section" & -n ".wkm". For example, a CADD file that would be the second sequential map from west to east in Metro Division's control section 2712 would be named MR2712-2.wkm.
3. When creating a plat file the file shall be named "district/division" & "P" & "plat-n" & extension ".plt". For example, a plat file that would be the 56th plat filed in Hennepin County would be Plat 27-56 and would be named "MP27-56.plt".
4. Before final R/W maps are archived by CAES, copies are converted using Descartes into raster files for access purposes.
5. All raster files used as reference files should be brought into Microstation in TIFF (CCITT group 4) format, then converted to CIT/COT format for use with Microstation. All archived raster files shall be in the TIFF format.
6. All R/W files shall be developed and laid out for sheet (plan size) plots, and should coincide with the plats.
7. All CADD files should begin and end near section lines or quarter lines.
8. All parcel flagging (arrows) will be done inside the parcels.
9. Authorization Maps:
  - a. All existing R/W lines or previously authorized R/W shall use the color green when color is needed.
  - b. All new R/W lines, fee access control and temporary easement shall be colored red when needed, and excess taking areas will use red cross hatching to indicate areas to be acquired in fee.
  - c. All changes in "to be acquired" R/W that has not been purchased shall be colored blue.

**107.4. RIGHT OF WAY PROJECT DESIGNATION AND "900" NUMBERING****1. Project Designation**

Original project designation is given by control section, with the legislative and constitutional highway numbers shown in parentheses after the control section number. The control section number for each project must be in accordance with the State Trunk Highway Control Section Record as revised in 1979. In addition to the number, the Office of Land Management designates R/W project numbers in a 900 series for each control section and shown after the parenthetical highway numbers: C.S. 1380 (35=390) 901.

R/W projects acquired prior to establishment of the control section numbering system carry a trunk highway number with arbitrary project and section numbers, thus: C.S. 6003 (2=8-50-2).

A search of files for previous acquisition will show the system of project numbering.

The Control Section numbers finally selected for designation on a new R/W, the area and job number and parcel number will be shown on the certificate of title forms. Area and job numbers and federal project numbers, if any, are obtained as outlined in Section 102, Charge Identifiers.

**2. Control Section Verification**

Verify control section in the Control Section Record Book. This is available from the Data Development Unit, Office of Management Data Service, Transportation Research and Investment Management Division, in the Central Office. Updates are available upon request.

- A. Verify that termini are within control section limits.
- B. Verify the legislative and constitutional route numbers.
- C. Changes in control sections are approved by the control section committee. Memos reflecting the change are sent to the District/Division Engineer. Review memos for any recent changes.

**3. 900 Numbering**

The 900 numbers are chosen in sequence for convenient sections or portions of a control section project, based on the number of parcels within a certain length of project or at times to coincide with the termini of a construction project. They normally increase from west to east and from south to north on the project.

- A. If the previous files are legal size the same 900 or former project numbers are used again.
- B. If the previous files are letter size, a new 900 number must be established.
- C. Review R/W file maps:
  - Check for previous acquisition in the area. How were previous parcels numbered (under what S.P. (C.S.), highway, legislative, and '900' numbers).
- D. If there is more than one numbering system, the most recent numbering configuration should be used, provided legal sized parcel files were used last.

- E. If there is no previous acquisition in the area or letter size files were used previously, layout project termini with respect to control section limits. If a project is in the middle of the control section, allow for possible future acquisition on either side of project. If a project is at the very beginning of the control section, parcels can be numbered starting with '901' parcel 1. Bear in mind there are 99 parcels in a '900' number ('901' would be parcels 1 to 99, then '902' would start with parcels 1 to 99, '903', etc.).
  - F. Send a memo to Project Coordination and Finance Unit Central Office regarding the parcel numbering used.
4. **Project designation - Special Cases**

The following system of numbering should be used for specific projects: microwave tower sites, maintenance storage sites and junkyards.

A. Microwave Tower and Maintenance Storage Sites.

Microwave tower sites and maintenance storage sites are numbered using the county number and the first two numbers of the site. The last three numbers of the site are the '900' number. For examples:

- ! Maintenance storage site number 80305 in Beltrami County. Beltrami is county number 4. This job would be numbered as C.S. 0480, with a '900' number of 305.
- ! Microwave tower site number 92486 in Lake County. Lake is county number 38. This job would be numbered as C.S. 3892, with a '900' number of 486.

B. Junkyards

All junk yard parcels will be numbered on State Project 8807-\*\*. If the junkyard is located in District 1, the Control Section would be C.S. 8807-01, in District 2, C.S. 8807-02, this is applicable to all Districts with the Metro Division being the exception. Metro Division projects will be numbered under C.S. 8807-05.

The Control Section associated with the State Project should be ascertained in the same manner specified in the numbering of normal parcels.

The '900' number is derived by using the numbers of the county and the district, i.e., a project in Hennepin County would be a '900' number of 275).

Parcel numbers should follow the scheme of the existing parcels with a Control Section with the exception that if there is an underlying Parcel 3, the Junkyard parcel would be labeled 3A, instead of 203. In Control Sections where there are no previous regular parcels, then the numbering would be based on a consecutive number of parcels in the particular county, i.e., if on Control Section 0406, there were two previous junkyards acquired, the next one would be C.S. 8807-02, C.S. 0406 (2=8) 042, Parcel 3.

C. Wetland Parcels

When Wetland/Ease./Credits parcels are for sites which are not adjacent to our TH R/W or directly tied to a specific Control Section the following numbering procedure should be used:

- a) Control Section = County No. + 00  
Example: Parcel in Hennepin County = C.S. 2700
- b) 900 number - This three digit number should be used as follows: first two digits are zeros, the third digit indicates the district acquiring the parcel. (Exception being Metro Division = 5.)  
Example: Metro Division buys a parcel in Mower Co. (005)  
Example: Bemidji buys a parcel in Benton Co. (002)
- c) Assign a parcel number sequentially according to the number of wetland parcels acquired.  
Example: If District has acquired 12 wetland parcels to this point in time, the next acquisition parcel will be 13.

Wetland parcels which are adjacent to our TH R/W and are being acquired in connection with other parcels on an identified control section should be numbered the same as any normal R/W parcel, see above.

The Artemis state project number and dash number should be shown together with the location of the Wetland site when it applies. Sites being acquired for future credits may not have an Artemis designation.

Should you have any questions regarding this information, contact the Project Coordination and Finance Unit in Central Office.

## 5. Spotting Titles

After the titles have been ordered for properties identified from the layout, copies are made and submitted to the survey unit or they may be kept in the R/W unit for spotting titles. This activity is the placing of the property lines in the CADD file by doing calculations based on the descriptions. Subdivision plats may on occasion be placed by holding the field monuments. The decision as to holding the field monuments as opposed to descriptions requires analysis and decision by the District Surveys. "Spotting" is done to check the ownership and to identify any boundary errors or easements that show up in the titles. This activity is key to identifying any gaps or overlaps in descriptions and to check for correct ownership or missing parcels to develop the caption blocks.

## 107.5 DEVELOPMENT OF THE RIGHT OF WAY MAP

### A. GENERAL MAP DEVELOPMENT GUIDELINES

1. The R/W line shall be laid out around all areas to be acquired in fee (See Fig. A 5-491.107) with labels for off take ditch, ponding area, scenic fee, rest areas, etc. If access is to be acquired, it shall follow the R/W line, except where shown between a connector road and mainline. Note: If frontage road is planned to eventually be "turned back" it is preferable to establish the access control at the time of "Turnback".
2. The R/W line is usually laid out at standard widths on each side of the centerline such as 75 ft. (23 meters) for two lane and 100 ft. (30 meters) for four lanes, etc, depending upon the typical section for the type of roadway. If the construction limits needed extends beyond the standard right of way for things such as large cuts or fills, then the general rule is to go 10 ft. (3 meters) behind the construction limits to facilitate equipment movements during construction. However, this is variable depending upon the slopes or structures involved.

**Note:** Define construction limits by typical section.

3. In areas where walls are being placed, enough easement or R/W must be acquired or kept to facilitate construction and maintenance of the wall. This may vary depending upon the height of the wall, footing size, and the slopes involved.
4. In areas where drainage pipes are buried enough easement or R/W should be acquired where possible on each side of the pipe or kept for excavation to install or repair the pipe if necessary. In most cases depending upon the soils involved this involves a 1 ½ to 1 excavation slope. An example would be if the pipe is buried 15 ft (3 meters) then the easement on each side of the center of the pipe should be 22.5 ft (7 meters) or a total of a 45 ft (14 meters) easement.
5. In the case of bridges, a 20 ft. (6 meters) clear zone is usually required outside of the edge of the bridge structure (rail). In this case, the bridge width must first be determined and then an additional 20 ft. (6 meters) should be added on each side to determine the R/W needed. If a standard R/W width is used that would cover this clear zone then no additional clear zone is needed. This may vary depending upon the structure size and location.
6. When laying R/W out for a permanent or temporary taking involving roads, streets or alleys owned by another governmental agency (this acquisition is done by commissioner's order) take the whole road when the project runs parallel with the road and only what is necessary when crossing roads in a more perpendicular fashion.
7. On projects where new R/W is to be platted, the layout methods will differ from centerline description methods. These differences are:
  - a. The R/W line itself will be made as simple as possible by eliminating as many curves and as many small jogs as possible.
  - b. All access control and temporary easements will be based on the new R/W boundary line and R/W boundary corners (not the centerline stationing). The result will be that temporary easements will either be parallel to the R/W boundary line or have a simple geometric relationship to it with whole foot/ meter dimensions. Another result will be that the dimensions from the boundary corners to access control points and temporary easements will be to whole feet/meters. This result is especially important in the case where the R/W boundary line and the centerline are not parallel. These standards are shown in Figure A 5-491.107. Access control layout is addressed in the Road Design Manual - section 2-3.06.
8. On projects where R/W was acquired previously, all parcel files are reviewed for special provisions. These provisions may include such items as construction limitations, cattle passes, cross overs on four lane divided highways, or restriction of tree and shrubbery cutting. The most common are:
  - a. Requirement that the state construct a cattle pass at a designated Engineer's Station and that it be maintained by the abutting owner.
  - b. Requirement that the state does not disturb designated trees within the R/W.

## **B. SPECIAL MAPPING PROVISIONS**

Special cases involve taking for specified purposes other than normal R/W for the roadway. These takings usually involve areas needed for construction such as borrow pits, gravel pits, waste disposal and staging areas. They may also be for support facilities such as park and rides, rest areas, pumping

stations, trails, transit hubs, drainage flow ways, building sites, maintenance facilities, channel and judicial ditches. They may also be some type of mitigation site such as wetlands, railroad bypasses, flood plains, parkland replacement, etc. The general rule is to label the new R/W taking line and to identify the purpose of the taking.

1. **Excess Taking** - On projects where owners request in writing that partial takes be converted to total takes and the decision is made to accommodate the requester, the area outside of the required R/W is labeled as excess acquisition and is shown with cross hatching. A separate description will be prepared for the shown excess portion.
2. **Uneconomic Remnants** - Uneconomic remnants are remnants of parcels which do not fall within the required R/W of partial takes that do not appear to have any value to the owner. This may be due to not meeting building codes, no access, etc. In these cases the R/W line is moved out to include these uneconomic remnants.
3. **Access** - Includes land locked parcels , vehicular access, full access control, direct access, lot lines.
4. **Gaps and Overlaps** - When dealing with gaps and overlaps ( situations where description lines either overlap each other or do not meet creating gaps in ownerships) a separate parcel needs to be designated for the gap or overlap. Ownership will be designated later at the point when the new descriptions are created.
5. **Permits** - When creating Limited Use Permits (LUP) an area will need to be created for each permit. This area shape will be placed on level 24 of the R/W CADD file, tagged and flagged similar to a parcel but the LUP number will be used instead of the parcel number. This shape is used in GIS/LIS information system. Ex. "LUP 27385".
6. **Scenic Easements and Rest Areas**

Where there is to be an acquisition of R/W and scenic area in fee, the taking should be laid out on the map with captions as indicated by Parcel 16 (see figure B 5-491.107). If access is to be acquired, it shall follow the R/W line which will be shown around the scenic area. A light solid line shall be drawn between the area required for R/W and the scenic area. In the scenic area, put in the words "Scenic area" and draw arrows designating the boundaries of the scenic area. This procedure shall also apply where there is to be an acquisition of R/W and a wayside rest area (refer to Parcel 15 on figure B 5-491.107 for layout and caption).

Should it be necessary to acquire R/W, rest area and scenic fee in one parcel, the R/W line and the caption shall be laid out as shown by Parcel 19 on figure B 5-491.107.

If there is to be an acquisition of R/W and a rest area in fee along with a scenic easement, parcels should be laid out as indicated by Parcel 14 on figure B 5-491.107. Only one caption will be required. One set of titles and field reports will be required which should be labeled Parcel 14 and Scenic Parcel 14. Where only R/W in fee and a scenic easement are to be acquired, the procedure is the same. Refer to Parcel 17 and Scenic Parcel 17 on figure B 5-491.107 for details on layout and caption.

Where a scenic easement only is to be acquired, the policy shall remain unchanged (refer to Scenic Parcel 18 on figure B 5-491.107).

Figure C 5-491.107 shows how to number the parcel and layout the right of way using the above

procedure when takings are acquired.

#### 7. **Temporary Easements**

Temporary easements shall be shown using medium length dashed line. However, each shall be labeled separately. A parcel consisting of only a temporary easement is set up in the same manner as a regular parcel with no designation as an easement parcel.

#### 8. **Borrow Pits**

You will note that the last taking in the illustration is a borrow area. This is to be used only for borrow pits adjoining the R/W that are to be a designated source. Any borrow pit that is not a designated source will be set up as a separate Borrow Pit Parcel, with a separate caption and expiration date shown if it is to be acquired temporarily.

#### 9. **Building Removals**

Building removals are to be laid out as shown in figure D 5-491.107. This is done because temporary easements may not be appraised at the same values as building removal easements.

### C. **LAYING OUT RIGHT OF WAY LINES** - Please Reference Figures A-F 5-491.107

### D. **PARCEL NUMBERING**

#### 1. **General Numbering Considerations**

Any parcel, which the State of Minnesota is acquiring, shall be assigned a parcel number using the following considerations.

- a. Parcels are normally numbered from south to north and from west to east same as "900" numbers. (Control section number, 900 numbers and parcel number could be combined and referred to as ROWIS Unique Parcel Identification.. For example, UPID 2712901236A = Control Section 2712, R/W phase 901, Parcel 236A.

On projects where the highway is at a new location, the ownerships are shown in numerical order of parcels from west to east, or south to north, using numbers 1, 2, 3, etc., not higher than 99. Only a single letter suffix is allowed to be used.

- b. All contiguous properties which the certificates of title show to have the same fee owner (with no exceptions such as Contract for Deed (C.F.D.), interest and memorials (mortgages, liens, lis pendens, etc.) are combined into one parcel. Contracts For Deeds should be noted on the caption block as both the C.F.D. and fee owners are involved. The caption block owner should be designated as the fee owner or the party who holds the contract.
- c. All parcels are shown, subject to county, township, or other road R/W, and easement for railroad R/W. Railroad R/W is shown as a separate parcel.
- d. Also review the Parcel Inventory listing and ROWIS. If there is previous acquisition on the control section, locate it in relation to the project. The object is to always coordinate the numbering for future acquisition. Call in previous parcel files, and condemnation files from the Record Center.

- e. Review all files for special provisions, reconveyances, corrective deeds, etc.

Special provisions are any rights or interests in the property which the State has granted to the owners. Common special provisions are cattle passes, drainage ditches, tree for planting to be left undisturbed. This is extremely important, as we must address any special provisions, be it to extinguish or perpetuate those rights.

Condemnation files are to be searched for special provisions, also.

1. These are commonly found in the Final Certificate, the Report of Commissioners, Stipulations, Appeals, Addendum, and/or Amendments.
2. On Direct Purchase parcels check the Warranty Deeds, Highway Easements and options and briefly skim correspondence.

Note: Once a numbering letter file has been established in your district, review any previous numbering letters in the area. This is to maintain consistency in parcel numbering.

**Check the Parcel Inventory Listing. Do not duplicate any parcel numbering. Every parcel acquired will have a unique combination of C.S., '900' and parcel number.**

## 2. Parcels - Subsequent Takings

On projects where R/W being acquired is a second purchase from abutting property owners, numbers in the two hundred series are used, i.e., 201, 202, 203, etc. On a third purchase, three hundred series numbers are used with similar progressive numbering for subsequent acquisition from the same property.

A memo, stating parcel numbering method used, should be placed in the district project file with a copy sent to the Project Coordination and Finance Unit in Central Office R/W, a copy to the District Engineer, and a copy placed in the numbering letter file. A copy of any special provisions found should accompany the memo.

## 3. Parcel splits

In subsequent takings it is often the case where the original parcel has been subdivided or split to create two or more parcels. When this occurs, the parcels created are given an alphabetical suffix with the first split parcel being given the alpha character A and the other splits being given the sequential alpha characters such as B, C, etc. If these parcels are split in additional subsequent takings the taking number will be changed and the additional takings will be labeled with alpha characters but the alpha characters must continue the sequence from the previous taking. An example of this is a parcel where the first take is parcel 32, the second taking is 232, the third take has found that the parcel was split into 3 parcels, these are numbered 332A, 332B, and 332C. A fourth taking finds that parcel 332A has been split and now becomes 432D and 432E. Double alpha characters are not permitted.

## 4. Railroads

Railroad parcels are parcel number 200 under the '900' series in the area. Subsequent taking are numbered 300, 400, etc. If another railroad taking is required within the '900' series, it will be numbered as parcel 200A.

### E. DEVELOPMENT PARCEL CAPTION BLOCKS AND OWNERSHIP DESIGNATION BY PARCEL NUMBERS

1. A caption block is shown on the map near the parcel, listing the assigned parcel number, the appropriate 900 series number of project designation, owner's name and all tracts included in the certificate of title. (See Figure F. 5-491.107 designation for detail)
2. The entire ownership is listed in the tract portion of each caption block.
3. The parcel caption block shall show area for various classifications of land.
4. Hectares or Acres for unplatted areas on both rural and urban areas.  
Square feet (square meters) for platted areas in and outside of the urban area, including outlots.
5. All utility and other easements mentioned in the certificate of title, or identified in the field report, are shown on the map, and listed above the caption block for affected parcels.
6. All exceptions listed on the certificate of title are shown on the map, when they are on the detail mapping corridor.
7. The certificates of title for properties not required for R/W are so noted and placed in the opinion file.
8. A copy of the full and true valuation on each parcel is returned with each title and field report from the Mn/DOT field agent.
9. Total tract ownership which appears on the full and true valuation form 25258 shall be shown on the R/W map when possible. Otherwise entire ownership is shown.

#### Caption Block Form: (see Figure F. 5-491.107)

Name owner of utility easements (if any)

Plat Number

Control Section (C.S.)

Parcel Number

Name of Owner (Fee Holder of Land)

Description of ownership (recorded description may be abbreviated or listed as portion of a tract)

Area: (Any of following when applicable)

Entire contiguous ownership area -

(with or without highway)

Hectares or Square Meters (Acres or Square Feet)

Old trunk highway right of way

Hectares or Square Meters (Acres or Square Feet)

Roads in new trunk highway right of way

Hectares or Square Meters (Acres or Square Feet)

New trunk highway right of way

Hectares or Square Meters (Acres or Square Feet)

Balance

Hectares or Square Meters (Acres or Square Feet)

East or North of trunk highway

Hectares or Square Meters (Acres or Square Feet)

West or South of trunk highway

Hectares or Square Meters (Acres or Square Feet)

Temporary Easements:

Building Removal

Hectares/Acres or Meters/Square Feet

(Expiration date)

Usually 2 years after letting date

Note: Expiration date is usually 5 construction seasons after letting date from December 1 of current year. (The change is made July 1 of the current year)

#### **F. UTILITY EASEMENTS**

Any easements to utility companies shown on the field report that have definite descriptions and are within 400 feet (122 m) of the proposed R/W are platted on the R/W map. Easements that cannot be specifically plotted are blanket easements and noted on the field report. These are shown in the caption with name of the company.

#### **G. AREAS**

When using Microstation to create shapes representing areas, they must be built as closed elements and tagged. The boundaries must be as exact as possible and, if necessary, computed from survey measurements. The eight categories are 1) project polygon, 2) total ownership area, 3) fee taking, 4) temporary easement, 5) excess taking area, 6) Limited Use Permit areas, 7) land use designation areas, 8) lease areas.)

#### **H. FIELD WALK**

Field walks must be done on all R/W projects to review parcels in the field to identify potential problems before submitting the R/W packages. While in the field, the topography should be checked to make sure no changes have occurred within the proposed R/W or in areas that may affect the R/W, or access, drainage, etc. Review mapping, check topography, tight R/W areas, grades, typical sections, and look for missed things such as septic systems, changes, missed signs, etc.

#### **I. UPDATES - CHANGES**

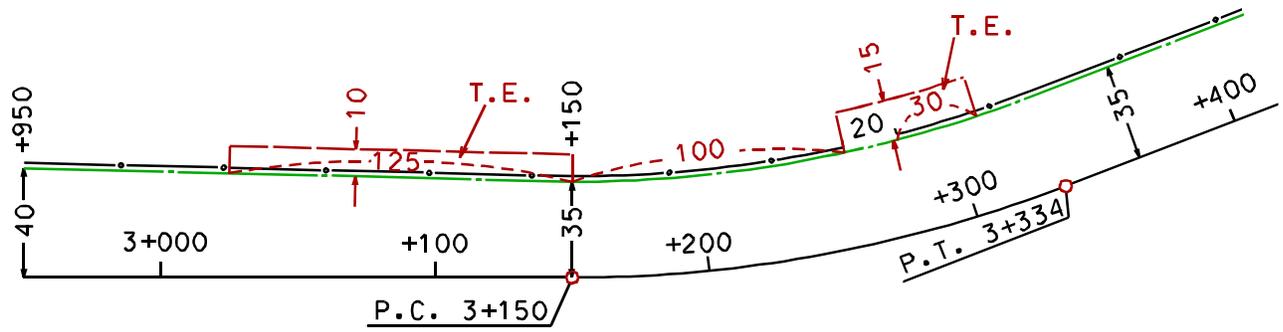
Because many projects take years to develop, it is most likely that there are changes that are taking place in the project areas that are not reflected in the maps. These changes must be captured as closely as possible to the appraisal and offer stages of the R/W acquisition. Before R/W packages are submitted to Central Office the technician should drive the project to review the current topography to look for any additional structures, changes, fences, etc. that would alert them to possible changes in ownership, or things that may affect appraisals or relocation. When items are found, the survey office or the R/W office must gather the information necessary to place the new topography onto the map. At that point decisions must be made as to the impact on the R/W process.

Any new subdivision platting information furnished on the field report is shown on the R/W map.

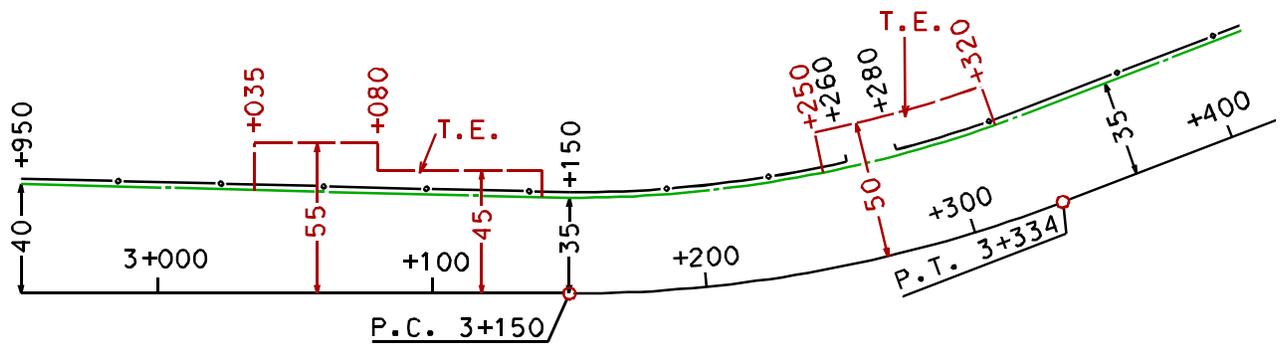
#### **J. FINALIZING R/W CADD FILE AFTER CONSTRUCTION AND CONDEMNATION**

When construction is completed a review should be made with the construction engineer and his staff to determine if any additional R/W issues or changes may have to be resolved by R/W or identified in the map or parcel file. In addition, at the end of the condemnation process the final certificates should be reviewed to see if any stipulations or changes during the condemnation process were made. If they were then they should be reflected on the maps.

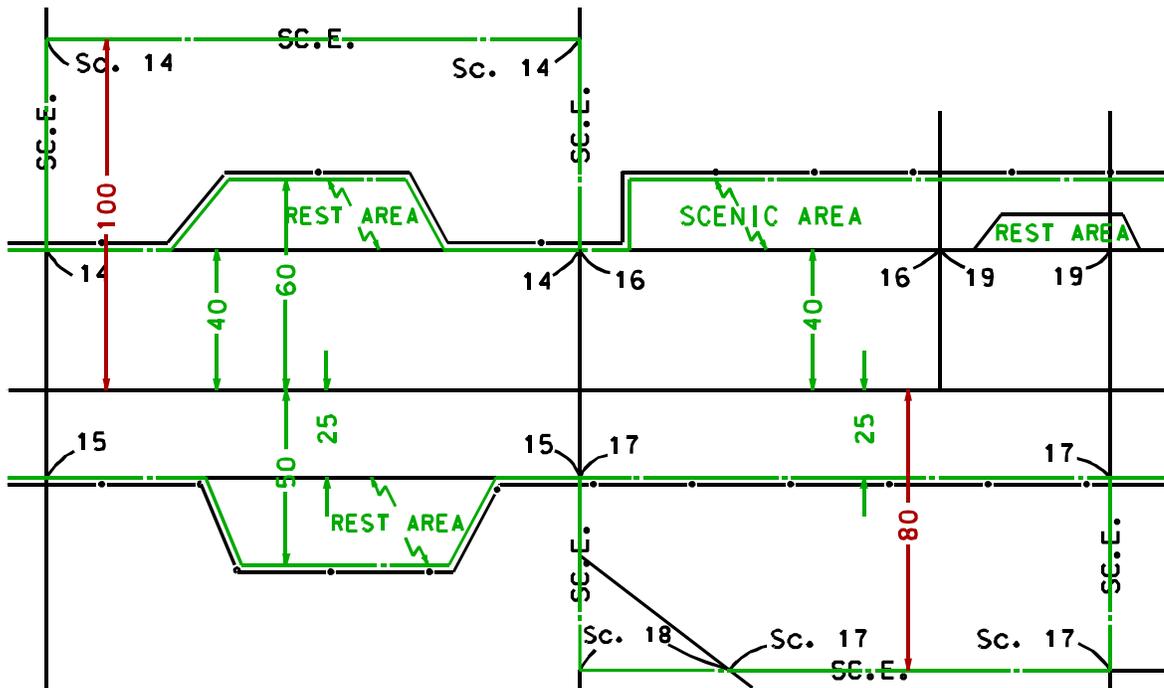
LAYOUT METHOD FOR PLAT R/W



LAYOUT METHOD FOR CL DESCRIPTION



All dimensions in meters except as noted.



C.S. 6221  
 PAR. 14 & Sc. PAR. 14  
 JOHN SMITH  
 GOV'T LOT 7 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
NEW T.H. R/W	0.00 ha
REST AREA	<u>0.00 ha</u>
BALANCE	0.00 ha
SCENIC EASEMENT	0.00 ha

C.S. 6221  
 PAR. 15  
 EARL JONES  
 NW 1/4 NW 1/4 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
NEW T.H. R/W	0.00 ha
REST AREA	<u>0.00 ha</u>
BALANCE	0.00 ha

C.S. 6221  
 PAR. 17 & Sc. PAR. 17  
 FRANK ANDERSON  
 GOV'T LOT 7 SEC. 22-23-24

ENTIRE TRACT	0.00 ha
NEW T.H. R/W	<u>0.00 ha</u>
BALANCE	0.00 ha
SCENIC EASEMENT	0.00 ha

C.S. 6221  
 Sc. PAR. 18  
 KELSEY DOE  
 GOV'T LOT 8 SEC. 23-24-25

SCENIC EASEMENT	0.00 ha
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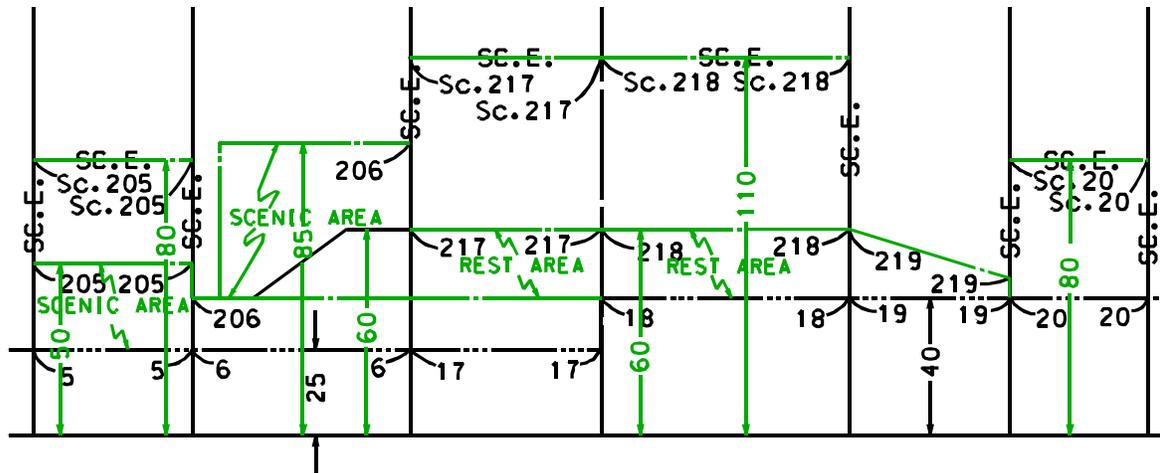
C.S. 6221  
 PAR. 16  
 BETHANY OLSON  
 NE 1/4 NE 1/4 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
NEW T.H. R/W	0.00 ha
SCENIC FEE	<u>0.00 ha</u>
BALANCE	0.00 ha

C.S. 6221  
 PAR. 19  
 ROGER DUFF  
 GOV'T LOT 9 SEC. 22-23-24

ENTIRE TRACT	0.00 ha
NEW T.H. R/W	0.00 ha
REST AREA	0.00 ha
SCENIC FEE	<u>0.00 ha</u>
BALANCE	0.00 ha

All dimensions in meters except as noted.



C.S. 2767  
PAR. 205 & Sc. PAR. 205  
JOHN SMITH  
GOV'T LOT 7 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
OLD T.H. R/W	0.00 ha
NEW T.H. R/W	0.00 ha
BALANCE	0.00 ha
SCENIC EASEMENT	0.00 ha

C.S. 2767  
PAR. 217 & Sc. PAR. 217  
EARL JONES  
NW 1/4 NW 1/4 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
OLD T.H. R/W	0.00 ha
NEW T.H. R/W	0.00 ha
REST AREA	0.00 ha
BALANCE	0.00 ha
SCENIC EASEMENT	0.00 ha

C.S. 2767  
PAR. 219  
FRANK ANDERSON  
GOV'T LOT 7 SEC. 22-23-24

ENTIRE TRACT	0.00 ha
REST AREA	0.00 ha
BALANCE	0.00 ha

C.S. 2767  
PAR. 206  
KELSEY DOE  
GOV'T LOT 8 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
OLD T.H. R/W	0.00 ha
NEW T.H. R/W	0.00 ha
REST AREA	0.00 ha
SCENIC FEE	0.00 ha
BALANCE	0.00 ha

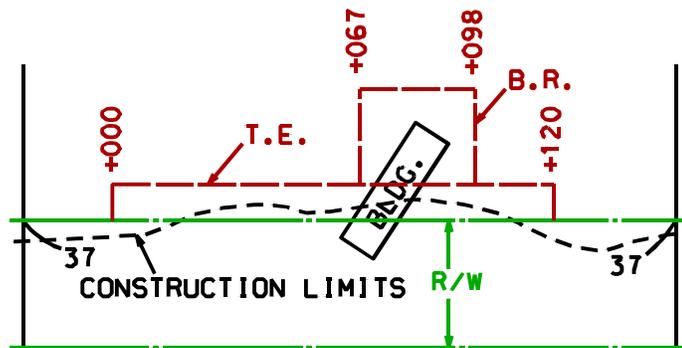
C.S. 2767  
PAR. 218 & Sc. PAR 218  
BETHANY OLSON  
NE 1/4 NE 1/4 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
OLD T.H. R/W	0.00 ha
REST AREA	0.00 ha
BALANCE	0.00 ha
SCENIC EASEMENT	0.00 ha

C.S. 2767  
Sc. PAR. 20  
ROGER DUFF  
GOV'T LOT 9 SEC. 22-23-24

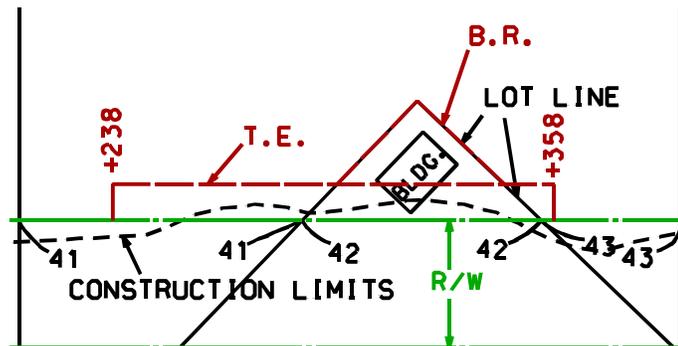
SCENIC EASEMENT	0.00 ha
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All dimensions in meters except as noted.



C.S. 6221  
PAR. 37  
CHESTER HARKES  
SE 1/4 NW 1/4 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
NEW T.H. R/W	<u>0.00 ha</u>
BALANCE	0.00 ha
TEMPORARY EASEMENT	0.00 ha
BUILDING REMOVAL EASEMENT	0.00 ha



C.S. 6221  
PAR. 41  
SAM FALL  
SE 1/4 SW 1/4 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
NEW T.H. R/W	<u>0.00 ha</u>
BALANCE	0.00 ha
TEMPORARY EASEMENT	0.00 ha

C.S. 6221  
PAR. 42  
TIANA CARTER  
SE 1/4 SW 1/4 SEC. 23-24-25

ENTIRE TRACT	0.00 ha
NEW T.H. R/W	<u>0.00 ha</u>
BALANCE	0.00 ha
TEMPORARY EASEMENT	0.00 ha
BUILDING REMOVAL EASEMENT	0.00 ha

C.S. 6221  
PAR. 43  
MARY MACY  
SE 1/4 SW 1/4 SEC. 23-24-25

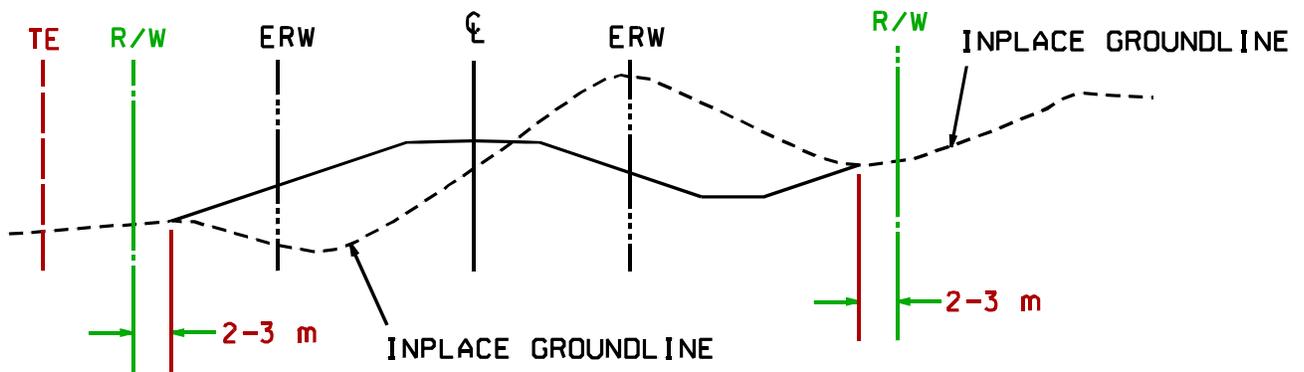
ENTIRE TRACT	0.00 ha
NEW T.H. R/W	<u>0.00 ha</u>
BALANCE	0.00 ha
TEMPORARY EASEMENT	0.00 ha

All dimensions in meters except as noted.

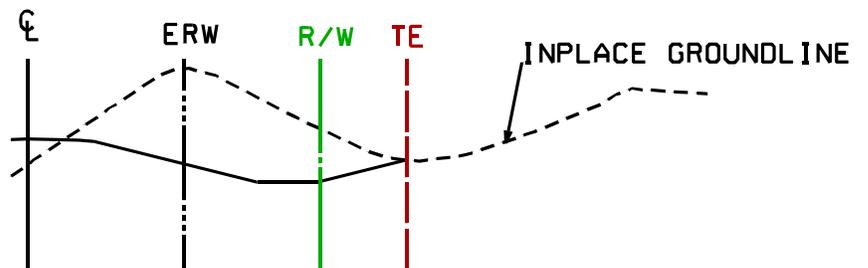
TYPICAL SECTION - GENERAL RULES

FILL SECTION

CUT SECTION  
1:3 SLOPE OR STEEPER  
(rise : run)



CUT SECTION  
SLOPE FLATTER THAN 1:3  
(rise : run)



All dimensions in meters except as noted.

## CAPTIONS - GENERAL RULES

## PLATTED EXAMPLE

EASEMENT TO AMERICAN ELECTRIC CO.  
 C.S. 8214 (36=45)901  
 PAR. 11  
 KELSEY LARKIN  
 LOT 1. BLOCK 2. EDGEWOOD ADDITION

ENTIRE TRACT	2000.0 m <sup>2</sup> (21527 ft <sup>2</sup> )
NEW T.H. R/W	100.0 m <sup>2</sup> ( 1076 ft <sup>2</sup> )
BALANCE	<u>1900.0 m<sup>2</sup> (20451 ft<sup>2</sup>)</u>
T.E (EXPIRES 12-1-07)	123.0 m <sup>2</sup> ( 1324 ft <sup>2</sup> )

## UNPLATTED EXAMPLE

EASEMENT TO NATIONAL GAS CO.  
 C.S. 8214 (36=45)901  
 PAR. 232  
 BETHANY PUCKETT  
 NE 1/4 NE 1/4 SEC. 23-24-25

ENTIRE TRACT (W/HWY)	3.150 ha (7.78 AC)
OTHER ROADS IN NEW T.H. R/W	0.202 ha (0.50 AC)
NEW T.H. R/W	0.382 ha (0.94 AC)
BALANCE	<u>2.566 ha (6.34 AC)</u>
BALANCE NORTH OF T.H. 36	1.408 ha (3.48 AC)
BALANCE SOUTH OF T.H. 36	1.158 ha (2.86 AC)
T.E (EXPIRES 12-1-07)	0.150 ha (0.37 AC)

All dimensions in meters except as noted.

**PRE-ACQUISITION (5-491.100)**  
**STAFF AUTHORIZATION MAP (5-491.108)**

**108.1 POLICY**

The staff authorization map showing the right of way and interests needed for a project is prepared and approved by the District. It is also approved by the Central Office staff prior to preparing Commissioner's orders for acquiring property interests. Every effort should be made to present an authorization map for approval which represents a true and accurate picture of MN/D.O.T.'s property acquisition needs.

**As a rule the Staff Authorization Map will depict the following whenever possible:**

- ! All construction limits in excess of the proposed basic right of way width and the nature of such construction, i.e., whether 1 vertical to 4 horizontal backslopes, etc. Limits of construction should be shown on ramps, in front of buildings, through platted areas and in other places where consideration might be given to restricting the right of way width.
- ! All geometrics, including entrances, entrance ramps, frontage roads, and crossovers for divided roadway construction.
- ! All proposed channel changes, off-take ditches and the alignment data and construction limits for the same.
- ! Borrow pits must be shown with proper ties so that accurate descriptions can be prepared by the Office of Land Management if they are required.
- ! Alignment data, distances and construction limits for ramps, special road connections, temporary by-passes and temporary connection when not a plat method project.
- ! All areas where obliteration of existing roads or entrances will be called for in the plan.
- ! Alignment and construction limits of any railroad shoo-flies.
- ! Construction limits for bridges.
- ! County, judicial and private ditches at the present location and proposed property acquisitions.
- ! Ownerships, grids, etc., as shown on right of way work map.
- ! Adequate land ties for use of writing descriptions. Location of government corners and procedure for land ties shall be in accordance with requirements of Section 3-8 of the Surveying and Mapping Manual.
- ! A basic uniform right of way width whenever possible, providing right of way from twenty to twenty-five feet (6-8 m) outside of the construction limits whenever feasible.
- ! Note on Cover Letter Form 25294, when a definite location for trunk highway is required instead of temporary per Minn. Stat. §161.16.

- ! The authorization map shall show, after the above information has been drawn, the right of way, temporary easement, and borrow pit lines as recommended by the District Engineer.
- ! All places where limited access is to be acquired must be indicated and the openings, if any, shown by station and plus, as recommended by the District Engineer. When on a plat job, dimension it to R/W boundary corners, as shown on Fig. A 5-491.107.

## 108.2 PROCEDURE

### **District Land Management/Right of Way Engineer**

1. Shows recommended right of way width and access taking in red on print of right of way work map and fronts for authorization map.
2. Prepares request for authority for acquisition of right of way and preparation of necessary orders (request for authorization, approval and signature form).
3. Reviews map, signs the request for authorization approval and signature form and obtains signature of Design Engineer, District Engineer and District Land Surveyor.
4. Includes memo with request for authorization to acquire the project via the "Metes and Bounds Descriptions" versus the "Plat Reference Method".
5. Prepares staff authorization - Cover Letter (Form 25294).
6. Includes as a part of the "Authorization Map" letters/memos which clarify the proposed acquisition.
7. Submits authorization map with attached Cover Letter (Form 25294) and authorization request, to Director, Office of Land Management.

### **Director of Office of Land Management**

8. Authorization map forwarded to Project Coordination and Finance Unit for staff recommendation and approval.

### **Project Coordination and Finance Unit**

9. Records and circulates for approval to:
  - ! Pre-Acquisition Section (Project Manager, Description Supervisor, Commissioner's Orders Supervisor, Pre-Acquisition Engineer)
  - ! Director of Office of Technical Support
  - ! Director of Office of Land Management
  - ! Division Director Engineering Services Division
  - ! Other Offices/Divisions as dictated by the requested acquisition.
10. Submits together with District "Right of Way Package" to Description Unit for preparation of right of way descriptions.
11. Returns authorization map to District Land Management/Right of Way Engineer if major corrections are required.

**District Land Management/Right of Way Engineer**

12. Reviews authorization map as returned and revises reproducible work copy of right of way map in accordance with required changes.
13. Returns authorization map, together with work copy to Pre-Acquisition Engineer in Office of Land Management who forwards it to Project Coordination and Finance Unit.

**Project Coordination and Finance Unit**

14. Records return of authorization map and receipt of corrected reproducible work copy.
15. Forwards work copy to Descriptions Unit for preparation of right of way descriptions.
16. Authorization map forwarded to Commissioner's Orders Unit for preparation of Commissioner's orders.

**Commissioner's Orders Unit**

17. Prepares required Commissioner's orders and forwards authorization map to Mapping Unit.

**Mapping Unit**

18. Draft the Commissioner's orders on the permanent right of way map. Authorization map is sent to central files after completion.

**PRE-ACQUISITION (5-491.100)**  
**PARCEL SKETCHES (5-491.109)**

**109.1 POLICY**

A scale map of each parcel showing the entire ownership and how it is affected by the proposed right of way acquisition is prepared for each appraisal.

**109.2 PROCEDURE****District Technician**

1. Upon completion of the right of way map, clip the parcel sketches from the CADD file for each parcel, except for railroad and State of Minnesota parcels, showing north at the top or left of sketch, the entire ownership, new and old right of way, access and other roads affecting the tract.

Remainder areas shall be shown on all parcel sketches together with boundary dimensions in accordance with record ownership on urban parcels. Ownership of rural properties need be shown by government subdivision only.

Location of buildings, railroads, rivers, streams, creeks, lakes and land lines should be included on the sketch. Also location of wells, septic systems, underground sprinklers, signs, and fences should be identified if appropriate. Location of building should include right angle distance from right of way line to nearest point of building.

Parcels or railroad or State of Minnesota ownership require showing of only the right of way to be acquired and that part of the ownership affected by acquisition.

2. Forward sketches in the right of way package.

**PRE-ACQUISITION (5-491.100)**  
**OFFICE ABSTRACTS (5-491.110)**

**110.1 POLICY**

Prior to the acquisition of a parcel for right of way, an office abstract will be prepared showing the names and nature of interest of all interested parties and any pertinent notes relating to the title of the property to be acquired.

**110.2 PROCEDURE****Legal Description and Commission's Orders Unit**

1. Identifies easements that will be affected by the acquisition and requests an office abstract from the Legal and Real Estate Conveyance Unit. Certificates of title and field title reports accompany the request.

**Legal and Real Estate Conveyance Unit**

2. Prepares the office abstract showing the names of all parties having an interest in each parcel, the nature of said interest, the address of each party, and any pertinent notes relating to property title. Preparation of office abstract from the above notes may uncover a new set of circumstances which would materially change the condition of the original title search. This may necessitate an updated certificate of title and field title report. The office abstract indicates acquisition by eminent domain upon finding that the title to the property is unmarketable. Notes on the office abstract may call for further field title investigation.
3. The completed office abstracts are returned to the Legal Description and Commissioner's Orders Unit.

**PRE-ACQUISITION (5-491.100)**  
**ACCESS CONTROL STANDARDS (5-491.111)**

**111.1 PURPOSE**

To perpetuate and/or restrict access control where the District Engineer and D.O.T. staff determine it is beneficial to the traveling public.

**DEFINITION**

Access to the various types of Minnesota highways is controlled in accordance with the following standards and as illustrated on Fig. A thru G in this section.

- A. Interstate Freeways: All direct access is closed, with only ingress and egress at intersections.
- B. ABC Highways: With freeway standards are the same as A.
- C. Expressways: With access control regulated openings in access normally at cross-overs.
- D. ABC Highways: With access control and openings for existing owners with a minimum of an opening to every ownership, possible with one opening common to two ownerships.
- E. ABC Highways: With access control at only certain intersections.

**111.2 ACCESS ACQUISITION**

- A. Statutory Authority

Minnesota Statute 160.08 says that in Minnesota access acquisition is a compensable item of damage.

“160.08 CONTROLLED ACCESS. Subdivision 1. Plans. The road authorities of the state, counties, cities, village, and boroughs acting either alone, or in cooperation with each other, or with any federal agency, or with any other state or subdivision of another state having authority to participate in the construction or maintenance of highways are authorized to plan for maintenance of controlled access highways for public use whenever the road authorities determine that traffic conditions, present or future, will justify such highways.

Subd. 3. Traffic Control. Such road authorities are authorized to so design any controlled access highway, and to so regulate, restrict, or prohibit access as to best serve the traffic for which the highway is intended. such road authorities are authorized to divide and separate any controlled access highway into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, or other devices. No person shall have any rights of ingress or egress to, from, or access controlled access highways to or from abutting lands, except at the designated points or roadways thereof where access is permitted by such road authorities upon such terms and conditions as such road authorities specify.

Subd. 5. Elimination of grade intersections; additional access openings; compensation. Such road authorities may locate, establish, and construct controlled access highways, or may designate and establish an existing street or highways as a controlled access highway. Such road authorities are authorized to provide for the elimination of grade intersections of controlled

access highways with other existing streets or highways of any kind or nature whatsoever. The elimination may be accomplished by the construction of grade separations, or the construction of an outer lane as part of the controlled access highway, or by closing off streets or highways at the right of way boundary of the controlled access highway. When an outer lane is constructed, the abutting owners shall have access to the outer lane unless the petition and notice in condemnation, or the highway deed in cases of purchase, clearly specifies that the right of access to the outer lane has been acquired. After the establishment of any controlled access highway no other street or highway or private entry shall be opened into or connected with any controlled access highway without the consent and prior approval of the road authority having jurisdiction over the controlled access highway. The consent and approval shall be given only if the public interest shall be served thereby. In the case of any elimination of existing access, air, view, light, or other compensable property rights, the owner shall be compensated for the loss by purchase or condemnation.

Subd. 6. Construction limited. None of the provisions contained herein shall be construed to limit, restrict or nullify any rights or easements of access heretofore acquired by the state or any of its political subdivisions.

Subd. 7. No commercial establishment within right of way. No commercial establishment, including but not limited to automotive service stations, for serving motor vehicle users shall be constructed or located within the right of way of, or on publicly-owned or publicly-leased land acquired or used for in connection with, a controlled access highway, except that structures may be built within safety rest and tourist information center areas and space within state owned buildings in those areas may be leased for the purpose of providing information to travelers through commercial and public service advertising pursuant to franchise agreements as provided in sections 160.276 to 160.278.

#### B. Owner's Rights

Under Minnesota law all abutting owners have a right of access to the public road and this is spelled out under 160.18:

“160.18 ACCESS TO ROADS; Approaches. Subdivision 1, Culvert to be furnished on existing highway. Except when the easement of access has been acquired, the road authorities as to highway already established and constructed shall furnish one substantial culvert to an abutting owner in cases where the culvert is necessary for suitable approach to such highway.

Comment: If right of way is being acquired without access control and a deep ditch or channel change is to be constructed parallel to the roadway, access should be closed in that area. This is to avoid requests for entrances that would so require structures to cross the ditch.

Subd. 2. Approaches to newly established highways. Except when the easement of access has been acquired, the road authorities in laying out and constructing a new highway or in relocating or reconstructing an old highway shall construct suitable approaches thereto within the limits of the right of way where the approaches are reasonably necessary and practicable, so as to provide abutting owners a reasonable means of access to such highway.

Subd. 3. Approaches to serve particular uses. The owner or occupant of property abutting upon a public highway, having a right of direct private access thereto, may provide such other or additional means of ingress from and egress to the highway as will facilitate the efficient use of the property for a particular lawful purpose, subject to reasonable regulation by and permit from the road authority as is necessary to prevent interference with the construction, maintenance and safe use of the highway and its appurtenances and the public use thereof.”

The first standard should be to restrict all access and then only allow openings as needed. This would not apply when only limited amount of access control is desired in select places or intersections. Based on the law each owner may have an access opening by an entrance, or be provided with an alternate means of access opening to and from the property. In rural areas where ownerships are 40 to 80 acre tracts along the highway an access opening every 1/4 of a mile and then on an ownership line common to two owners whenever possible. These are normally 60 feet or 66 feet openings.

C. Definition: Frontage Road (same as outer drive). A road that is usually parallel to the mainline roadway and provides access to the mainline at a grade connection or at an interchange somewhere along, or at the end of the frontage road.

1. Access Control in Relation to Frontage Roads. No access is to be shown or acquired between the abutting owner and the frontage except on rare occasions where for some reasons there is a need. This access would then be acquired with the R/W for the frontage road, or have to be acquired separately if the frontage road is built on existing R/W and for some reason access is needed on the R/W line.

If there is existing access control and the frontage road is to be constructed between the mainline and the right of way line, the existing access control would have to be perpetuated by an Amended Commissioner's Order (this is assuming there is also other right of way and access being acquired elsewhere on the same project), if not it is lost.

2. No access is shown on the maps between the frontage roads and the mainlines. It is the policy to control connections between these by police power.
3. The FHWA requires the method of access control be shown on the maps. The normal symbol is used on the jobs and between frontage roads and mainlines the map is stamped: "ACCESS CONTROL BY POLICE POWER" when requesting authority to acquire right of way. The FHWA has approved this procedure.

D. Definition: Connector Road

A road that just connects a road or roads together that are cut off by the access controlled highway. They may also be a road across one tract to provide access for an otherwise landlocked tract. This road does not connect or provide access to the trunk highway.

The access control should be shown on the map between the connector roads and mainline. This is also covered by Commissioner's Order. The access is spelled out as closed to the trunk highway and the abutting owner has access to the connector road only, which road does not allow access to the trunk highways.

E. Second Access Acquisition

When additional right of way is acquired outside of access controlled right of way the access should be shown again on the "new" right of way and included in the new acquisition as the access control does not move out to the new right of way line. (usually there is no cost for the new unless more restrictions are added.)

F. Access Control on a Property Line

When the right of way is acquired on the parcel of land, whether it is an entire take or the right of way line is running on the property line, the access is shown without acquisition from the abutting owner, when no land is acquired from the abutting owner. This only pertains to a new location of a highway where the abutting owner had no access to a highway. "The reason expressed by the majority of the courts so holding is that, since no rights had been taken from the owner, he is not entitled to compensation for denial or loss of a right which never existed."

If right of way was previously acquired on the lot line and no access was acquired, but now it is decided to restrict it, then an access parcel will be prepared and the right of access acquired.

Access control along crossroads should be what it takes to protect the intersection (see attached drawings) the 100' and 300' shown are basic and it may require more or less in various situations to insure safety for the traveling public, e.g. tu!

G. Access to Isolated Property

1. By State Action

The law given the State right to provide access to isolated lands as follows:

M.S.A. 161.24 Highways; Changes Required by Construction of Trunk Highway

"Subd. 4. Access to Isolated Property. When the establishment, construction, or reconstruction of a trunk highway closes off any other highway or street, including city, village, or borough streets, private road, or entrance at the boundary of such trunk highway the commissioner may in mitigation of damages or in the interest of safety and convenient public travel, construct a road either within the limits of the trunk highway, or without the limits of the trunk highway, connecting the closed off highway, street, private road, or entrance with another public highway. In determining whether to build the road within or without the limits of the trunk highway, the commissioner may take into consideration economy to the state and local traffic needs. The commissioner, in mitigation of damages, may connect a closed off private road with the remaining portion of the private road or with another private road. All lands necessary therefore may be acquired by purchase, gift, or condemnation."

2. By Town Board Action

The law gives the Town Board the right to provide access to an isolated property, M.S.A. 164.08 Cartways.

"Subd. 2. Shall be established in certain instances. Upon petition presented to the town board by the owner of a tract of land containing at least five acres who has no access thereto except over land of others, the town board by resolution shall establish a cartway at least two rods wide connecting the petitioner's land with a public road." The amount of damages, if any, shall be paid for by the petitioner to the Town Board before such Cartway is opened.

H. Vehicular Access

This access control is occasionally needed where it is desired to not permit vehicles ingress and egress to a highway, but do not want to restrict pedestrians from entering (usually to a sidewalk).

**I. Access Release**

Access can be released by amending the Commissioner of Transportations' Access Order when a platted street or road is platted outside the right of way. Caution should be used in this method as land developers have been known to plat outside of access controlled right of way with the intention of getting an access opening at a certain location. The first step is the approval of a plat by the Transportation Department (District and Preliminary design in the Central Office).

**J. Access Reconveyance**

Access rights must be reconveyed and market value determined for the amount of money the owner must pay for the relinquishment of access control.

**K. Exchange of Openings**

This is the most commonly used where an existing opening is closed and the same width opened at another location, usually close by on the same parcel of land. Possibly more could be closed than opened but if it varies much it is possible a value would have to be established. If it is an even exchange, a charge is made to the owner for processing. These should be approved and requested by the District and processed in the central office.

**L. Access on Turnbacks**

On access controlled primary facilities when old roads and frontage roads are turned back to other governmental agencies, the access control should be retained between these areas and the new mainlines. This access restriction will be in deed of conveyance.

The portion of the side road and the right of way that has controlled access must be retained in the trunk highway system.

**M. Access with Trails**

The access should be shown on the R/W line, even when the trail is on the right of way.

**111.3 CONTROL ENFORCEMENT**

Control of access rights acquired by due process in subject to regulation in accordance with M.S. 169.305, Controlled Access Regulations and Penalties.

Subdivision 1 a. No person shall drive a vehicle onto or from any controlled access roadway except at such entrances and exists as are established by public authority.

Subdivision 3. Any person violating the provisions of subdivision 1 or any order or ordinance promulgated or enacted by the commissioner of transportation or a public authority pursuant thereto is guilty of a misdemeanor.

NOTE: Access control is also shown in Road Design Manual 2-3.06.

**PRE-ACQUISITION (5-491.100)**  
**ESTIMATED COST OF R/W OBLIGATION AND ENCUMBRANCES OF FUNDS**  
**(5-491.112)**

### 112.1 POLICY

A lump sum estimate of cost of right of way acquisition for each project is made for the initial programming and the development of the State Transportation Improvement Program (STIP) and the Project Scheduling System (ARTEMIS) (see Section 101 - Initial Programming)

Federal funded right of way projects require a parcel by parcel estimate of the R/W cost for each project. This estimate is required for the establishment of incidental costs, the determination of the availability of funds, and for the obligation of funds with the Federal Highway Administration (FHWA).

The encumbrance requisition is initiated after a certified appraisal has been completed for the parcel. When federal participation in the acquisition of R/W applies, the encumbrance of funds is initiated upon receiving authorization of "approval to proceed with the purchase of R/W" from the Federal Highway Administration .

An encumbrance requisition is also obtained for each project. When a project is covered by more than one area and job number, a separate encumbrance requisition is obtained for each area and job.

### 112.2 PROCEDURE

#### **District Land Management/Right of Way Engineer**

1. Obtains copy of preliminary layout for each project requiring the involvement of a R/W acquisition.
2. Assigns right of way agent with the responsibility of estimating the cost of the R/W as depicted on the preliminary layout.
3. The estimate of right of way costs are transmitted to the District Program Coordinator for use in developing the STIP and Project Scheduling System/Artemis.

#### **Project Coordination and Finance Unit - Project Manager**

4. Obligation of funds is initially completed thru the approval of the State Transportation Improvement Program/Artemis.
5. The encumbrance of funds for the parcels with Federal participation is initiated after FHWA approval to buy is approved. A work map depicting the parcels and areas needed is submitted to the Valuation Section for an estimate of cost.
6. A request is also submitted to the Relocation/Property Management Unit, listing parcels involved for an estimate of the relocation costs.
  - a) An estimate of the appraisal value per parcel is completed by the Valuation Section and submitted to the Project Manager.
  - b) An estimate of the replacement housing, demolition, and relocation costs by parcel are completed by the Relocation/Property Management Unit and submitted to the Project Manager.

7. The estimated appraisal value, the estimated relocation and demolition costs together with the anticipated incidental costs are assembled into a request form for submittal thru the Office of Investment Management (OIM) to the Federal Highway Administration for approval to proceed with the acquisition.

**Federal Highway Administration**

8. Returns letter to the Department of Transportation (Office of Investment Management) approving the request for authority and obligation with or without conditions or with complete disapproval. The original authority stays in the OIM and copies are sent to the Project Coordination and Finance Unit Project Manager.

**Project Coordination and Finance Unit - Project Manager**

9. Encumbrance of funds for state funded and federal funded projects.
  - A. State funded parcels: The Project Manager submits a listing of the parcels and their estimated value, relocation and demolition costs, and incidental costs to the Finance Section for encumbrance upon completion of the estimates by the Valuation Section and the Relocation/Property Management Unit. This request does not require F.H.W.A. approval.
  - B. Parcels with federal participation: These parcel listing are submitted to the Finance Section in the same format as requested above by the Project Manager once they have been approved for purchase by the FHWA.

**PRE-ACQUISITION (5-491.100)**  
**DESCRIPTIONS (5-491.113)**

**113.1 POLICY**

An accurate parcel legal description is required for state land transactions. The documents used in direct purchase or acquisition by eminent domain must also contain accurate descriptions.

**113.2 PROCEDURE****District Land Management/R/W Engineer**

1. Submits the following documents in a "Right of Way Package" to Central Office Project Coordination and Finance Unit.
  - a. Reproducible work map of subject project with adequate land ties. See Section 103 - Basic Maps.
  - b. Original and duplicate of Attorney's Certificate of Title (Form 2508).
  - c. Original and duplicate Field Title Reports (Form 25085).
  - d. Original and duplicate Full and True Valuation (Form 25258).
  - e. Parcel Sketches (Form 2558).
  - f. Building Sketches (Form 2527).
  - g. Relocation copy of Building Book, Appraisal copy of Building Book.
  - h. Original and duplicate of Record of Signs (Form 25183).
  - i. District recommendations to perpetuate or eliminate existing conditions of construction, topographic features.
  - j. Signed authorization map (See Sec. 108, Staff Authorization Map).
  - k. Completed plat computations for plat (to Platting Unit).

**Project Coordination and Finance Unit**

2. Records receipt from District Right of Way Engineer. (Enters into ROWIS if not done).
3. Forwards right of way package to Description Unit with assignment sheet from the Project Coordinator.

**Description Unit Manager**

4. Reviews assignment for completeness, special circumstances, or procedures.
5. Reviews for conformance to Standards of Surveying Practice. Consults with legal staff, other land surveyors or District staff concerning expected results.
6. Assigns projects to description writers.

**Description Preliminary Technician**

7. Sets up file folders with labels and compares listed ownerships with the title.
8. Notifies Project Coordination and Finance Unit of any discrepancy and to make ROWIS correction.
9. Orders previously acquired parcels from the Record Center.
10. Forwards original attorneys certificate of titles and orders office abstract from the Legal and Real Estate Conveyance Unit.

11. Orders additional data and subdivision plats from District.
12. Orders title updates if the titles are older than permitted.
13. Compares work map to autho maps and R/W maps.
14. Checks title descriptions against plotting of properties and determines any gaps or overlaps.
15. Compares old parcel files with existing right of way map and checks for the existence of special provisions.
16. Checks ownerships and titles and notify Project Coordination and Finance Unit of any discrepancies.

### **Description Writer**

17. Review all documents for completeness and obtains transportation right of way plats if applicable.
18. Begins the description writing process which includes the following work tasks:
  - A. Checks each parcel description for correct location of property.
  - B. Reviews the preliminary plats for accuracy in plotting and in applicable text.
  - C. Determines areas by Computation, Digitizing or CADD System determination from the plat.
  - D.. Enters corrected data on work map.
  - E. Prepares captions and caption block forms.
  - F. Completes right of way inventory data within ROWIS.
  - G. Initials each parcel file as to writer and date.
  - H. Submits the package to another writer for complete checking.
  - I. Writer reviews, all changes and prepares final description and retains an electronic copy.
  - J. Prints four copies of the final description for the file.
  - K. Makes copies of the work map for Appraisal Unit and District Office.
  - L. A standard form of a basic description would be as follows:
    - ! Heading: Date, fee taking or easement taking, control section number, state project number, parcel number and federal number if applicable.
    - ! Description of recorded or blanket tract ownership.
    - ! Plat reference or map of survey reference if applicable or width of right of way to be acquired, description of survey line, additional widenings beyond the basic right of way.
    - ! Description of access control.
    - ! Description of temporary takings.
    - ! Areas for all takings.
19. Submits the following work products to the Project Coordination and Finance Unit:
  - a. A print of the work map or electronic work map file.
  - b. Parcel files with copies of prepared and checked descriptions.
  - c. Office abstracts and titles.
  - d. Authorization map.
  - e. Parcel sketches
  - f. Subdivision plats if a centerline project.

**PRE-ACQUISITION (5-491.100)**  
**FEE OR EASEMENT DETERMINATION (5-491.114)**

**114.1 POLICY**

All right of way will be acquired in fee simple absolute, unless there is some distinct reason why it would be in the best interest of the state to acquire in a lesser estate such as by easement rights.

**114.2 PROCEDURE****District Land Management/Right of Way Engineer**

1. The District Office will research and determine if Mn/DOT should acquire by easement or other ownership interest.

Criteria for determination:

- a. Easements will be acquired for:
    - ! Operating portions of railroad R/W
    - ! Acquisition of railroad property where the railroad company has easement only
    - ! Bodies of water under jurisdiction of federal government.
    - ! Where only surface rights are required and expensive underground development is in place
    - ! Selected wetland areas
    - ! When the fee is already owned by state, an easement or transfer of custodial may be obtained
  - b. Acquisitions that should not be considered for easement:
    - ! Sites for construction of buildings
    - ! Channel changes
    - ! Bodies of water under jurisdiction of the State
    - ! Non-operating railroad right of way
    - ! Base of slope
2. Temporary easements will be acquired for sloping, tileline, by-pass, borrow, waste and disposal shoo-fly, building removal or any other temporary use.
  3. The determination of fee or easement or some other nature of interest should be conveyed clearly to all concerned parties, by including it as a part of the authorization map. If the acquisition is for an easement or some other nature of interest, a memorandum should be written for approval and placed as a part of the authorization map. If the acquisition is for fee only it should be clearly shown on the authorization map and added as information to the Cover Letter (Form 25294.)

**PRE-ACQUISITION (5-491.100)**  
**COMMISSIONER'S ORDERS (5-491.115)**

**115.1 POLICY**

- A. Commissioner's orders are required by Minn. Stat. Sect. 161.16, Subdivision 2, which states:

*Designation and Location by Order. The commissioner shall by order or orders designate such temporary trunk highways, and on determining the definite location of any trunk highway or portion thereof, the same shall also be designated by order or orders. The definite location of such highway or portion thereof may be in the form of a map or plat showing the lands and interests in lands required for trunk highway purposes. Formal determination or order if by map or plat, shall be certified by the commissioner of transportation on said map or plat. The commissioner may, by similar order or orders, change the definite location of any trunk highway between the fixed termini, as fixed by law, when such changes are necessary in the interest of safety and convenient public travel. The commissioner shall file certified copies of such orders with the county auditor of the county wherein such highways are located. Such certified copies shall become permanent records and shall not be removed from the office or offices wherein filed.*

- B. Orders are signed and dated by the Commissioner of Transportation or designee. Orders are numbered, dated and kept in a permanent files in the Commissioner's immediate possession. Section 161.09 ORDERS, FILES AND RECORDS. Subdivision 1, Minnesota Statutes, provides:

*Commissioner to be custodian. The official acts and determinations of the commissioner shall be denominated orders. The commissioner shall be custodian of and shall preserve such orders and the records and files of the Transportation department and its predecessor departments. Subject to reasonable rules, the orders, records, and files shall be open to public inspection.*

- C. All orders must make reference to the Legislative or Constitutional Route Number, as well as the route marking as designated by the Commissioner.
- D. The Commissioner by official order determines the lands necessary for trunk highway purposes and interest to be acquired.
- E. No interest in land can be acquired until the Commissioner has determined by order, that certain specifically described land is needed for highway purposes. The order should embrace the description of the taking in terms which can be interpreted to the extent necessary for identification. Any locatable description in the order must have some base location by reference to the location line, monuments, section lines or recorded subdivision.
- F. The Commissioner's Order Unit Leader receives copies of reports of Commissioners, stipulation and dismissals in pending proceedings for right of way acquisition, records same and supervises the amending of orders to fit the various situations.

**115.2 PROCEDURE****Commissioner's Order Unit Leader**

1. Reviews preliminary authorization map to see whether it shows the basic information needed to prepare Commissioner's orders, including land ties, alignment, route section numbers and other pertinent data.
2. Receives signed authorization map from Project Coordination and Finance Unit (as required in Sec. 108 - Staff Authorization Map).
3. Records projects in current books for permanent records when completed.
4. Reviews authorization map for types of orders required and deadline date.
5. Contacts the Attorney General's staff for legal determination when new type of order or right of way opinion is needed in preparing Commissioner of Transportation orders.
6. Prepares orders if time permits or assigns and forwards to an order technician for writing and assists when necessary.

#### **Technician**

7. Searches the permanent right of way maps, previous authorization maps and order life book to determine whether new orders are necessary or if the existing orders should be amended.
8. Checks land ties, centerline alignment, right of way boundaries, distances and curve data on right of way map.
9. Checks the numbers of the orders in effect and enters each in the caption of the new order, as number of the orders to be amended, if required.
10. Prepares Commissioner's orders for right of way plat, graphics, definite location, width, access, temporary easement, material pit, haul road, detour, vacation, supplemental temporary trunk highway designation, trunk highway excess acquisition, drainage ditch, channel change, flowage easement, sewer line, tile line, maintenance storage site, radio tower site, drivers license site, scenic easement, miscellaneous permanent and temporary orders, with designated action for each situation.

**NOTE: For details and preparing specific types of both graphic or written orders see Sections 115.3 and 115.4**

11. Forwards orders and authorization map to unit leader.

#### **Commissioner's Order Unit Leader**

12. Assigns Commissioner's orders to a technician for checking. The leader will review the checked document and have it prepared in final format.
13. Forwards authorization map to the Assistant Director of Land Management for signature.
14. Forwards original orders to Commissioner of Transportation or designee for signature.

#### **Commissioner of Transportation or Designee**

15. Signs and returns to Commissioner's Orders Unit Leader.

**Commissioner's Order Unit Leader**

16. Seals Commissioner of Transportation order. Forwards signed originals to administrative support to obtain 3 copies except where the orders apply to Hennepin, Ramsey and St. Louis Counties. It is then necessary to obtain additional copies as follows:
  - Hennepin (within city limits) one copy
  - Ramsey (within city limits) one copy
  - St. Louis - one copy
17. Certifies one copy and directs the recording of the termini, order number and date signed in the graphic log.

**Technician**

18. Prepares a graphic log and plotting of all Commissioner's orders. These records are kept in the following books:
  - a. Chronological book
  - b. Order life book (original and copy).
19. Transmits staff authorization map with identification reference data and order numbers shown, to the mapping unit leader to be placed on the map as a permanent record.

**Administrative Support**

20. Distributes copies as follows:
  - 1 Original - Commissioner of Transportation order book
  - 1 Certified copy - to County Auditor
  - 1 Copy to District Engineer
  - 1 Copy for working copy order book
  - 1 Copy to Minneapolis Director of Property Taxation (within city limits)
  - 1 Certified copy to St. Paul Valuation Engineer (within city limits) - with print of map
  - 1 Copy to City Engineer of St. Paul (within city limits)
  - 1 Copy to St. Louis County Engineer (within county limits)

**115.3 GRAPHIC ORDERS PROCEDURE****A. Right of way Plat Orders****Orders Supervisor**

1. Receives request from Platting Unit and assigns Commissioners order number for each document and returns to the Platting Unit Supervisor.
2. Receives print of signed plat from Platting Unit and reviews document for compliance with the order statute.
3. Places Commissioner's certification with appropriate signature and seal on the document for distribution to the appropriate county auditor by the district/division surveyor.

**B. Graphic Map Orders****Orders Supervisor**

1. Receives a paper copy of the Commissioner's orders map and electronic files from the District/Division.

2. Reviews graphics map prepared by District/Division for compliance with orders map standards and obtain the electronic files for use by the Commissioner's Orders Unit. These standards are available from the Commissioner's Orders Unit in the Central Office.
3. Checks the orders map (the Map) against the staff authorization map for proper delineation of intent.
4. Checks the Map for completeness of Commissioner's orders statements necessary to comply with statutes including disclaimers.
5. The Map shall include all existing land under the jurisdiction of the Commissioner so that all of the previous orders within the limits of the Map will be superseded by the new orders map.
6. The Map shall be checked for compliance with all existing orders within the scope of the Map.
7. When the Map has been approved by the Orders Supervisor, it shall be sent for printing on a Mylar sheet for use as an original document.
8. The Orders Supervisor will review the plotting of the Map on mylar and will schedule the Map for final signatures.
9. A copy of the signed Map will be reproduced on a paper base, certified and sent to the proper County Auditor.
10. The mylar Map will be placed in a permanent file retained by the Commissioner for that purpose. The final electronic file will be stored in a data base so others can use the file for quick reference and access by computer. A numeric index of orders maps will be prepared and maintained by the Orders Unit so that the electronic location of the Maps can be easily determined by interested users.

#### 115.4 WRITTEN ORDERS PROCEDURES

##### Commissioner Order Unit Leader

Prepares or assigns the responsibility of the following orders.

##### A. Definite Location Order:

If permanent orders have not been written, prepares a new definite location order.

or

When the new authorization map shows a major change in alignment by deviating from the old location line to such an extent that the abutting property owners will lose the value of road proximity, prepares a major relocation order, including the procedure in 115.2 step 9.

or

When the new authorization map shows a major change in alignment or when the previous line consists of several original and amended orders, and there is no change in alignment, for the purpose of clarity, prepares an amended order including the procedure in 115.2 step 9.

##### B. Width Orders

When permanent orders have not been written; describes and dictates the limits of the right of way each side of the location line

or

When the new authorization map shows additional takings or changes in the right of way, prepares an amended width order, including the procedure in 115.2 step 9.

**C. Access Orders**

If orders have not been written; specifically describes the restricted access to the trunk highway.

or

When the new authorization map shows changes in the access, prepares an amended access order, including the procedure in 115.2 step 9.

**D. Temporary Easement Orders and other Miscellaneous Temporary Orders**

If the new authorization indicates additional land for a specific temporary purpose; prepares the appropriate order, including the procedure in 115.2 step 9.

**E. Drainage Ditch, Channel Change, Flowage Easement, Sewer Line, Tile Line, Maintenance Storage Site, Radio Tower Site, Drivers License Site and Trunk Highway Improvement Orders, Scenic Areas, Scenic Easements, and other miscellaneous permanent orders:**

If the new authorization map indicated additional land for specific permanent purposes as above; prepares the appropriate order including the procedure in 115.2 step 9.

**F. Trunk Highway Excess Acquisition: (See 5-491.127)**

Section 161.23, Subdivision 1, Minnesota Statutes, provides as follows as to excess acquisition:

*“Acquisition of entire tract. On determining that it is necessary to acquire any interest in a part of a tract or parcel of real estate for trunk highway purposes, the Commissioner of Transportation may acquire in fee, with the written consent of the owner or owners thereof, by purchase, gift or condemnation the whole or such additional parts of such tract or parcel as the Commissioner deems to be in the best interests of the state. Any owner or owners consenting to such excess acquisition may withdraw the consent at any time prior to the award of commissioners in the case of condemnation proceedings, or at any time prior to payment in the case of purchase. In the event of withdrawal the commission shall dismiss from the condemnation proceedings the portion of the tract in excess of what is needed for highway purposes.”*

In case of determination as above, an excess acquisition order shall be prepared, including the procedure in 115.2 step 9. In case of withdrawal of owner consent for excess acquisition, the original excess acquisition order shall be rescinded accordingly.

**G. Vacation Order: (See 5-491.129)**

The Commissioner may make an order vacating a portion of the road pursuant to Section 161.16, Subdivision 6, Minnesota Statutes as follows:

*“Vacation. When the definite location of any trunk highway takes the place of and serves the same purpose as any portion of an existing road, however established, the commissioner may make an order vacating such portion of the road. A copy of the order shall be served upon the owners and occupants of the land on which is located the portion of the road so vacated and, if the road terminates at or abuts upon any public water;. a copy of the order also shall be served upon the*

*commissioner of natural resources. The notice under this subdivision is for notification purposes only and does not create a right of intervention by the commissioner of natural resources. A copy of the order, together with proof of service, or affidavit of publication if the owners are unknown or reside outside of the state, shall be filed with the county auditor of the county in which such land lies. Any person claiming to be damaged by the vacation may appeal at any time within 30 days after the service of the order to the district court of the county for a determination of his damages, by serving notice of the appeal on the commissioner and filing same with proof of service in the office of the court administrator of the of district court. The appeal shall be tried in the same manner as an appeal from an award in proceedings in eminent domain."*

#### **H. Supplemental Temporary Trunk Highway Order:**

When additional land adjacent to a temporary trunk highway are needed for highway purposes, prepares a supplemental temporary trunk highway order including the procedure in Step 9.

#### **I. Designation Order:**

Under the authority of Minnesota Statutes 160.08, Subdivision 1 and 5, before any orders are written, prepares a designation order.

#### **J. Establishment Order:**

After each portion of interstate highway has been designated, constructed and open to public travel, prepares an establishment order.

### **115.5 MAINTENANCE ORDERS POLICY**

- A. Commissioner's orders for detours and haul roads are required by law. Section 161.25, Minnesota Statutes, provides:

*If, for the purpose of constructing or maintaining any trunk highway, the use of any public street or highway is necessary for a detour or haul road, the commissioner may designate any street or highway as a temporary trunk highway detour or as a temporary trunk highway haul road, and shall thereafter maintain the same as a temporary trunk highway until the commissioner revokes the designation. Prior to revoking the designation the commissioner shall restore such streets or highways to as good condition as they were prior to the designation of same as temporary trunk highways. Upon revoking the designations, the streets or highways shall revert to the subdivision charged with the care thereof at the time it was taken over as a temporary trunk highway."*

Section 161.24, Subdivision 3, Minnesota Statutes, provides:

*"Detours during construction. On determining, during construction, reconstruction, or maintenance of a trunk highway, that it is impractical to provide crossovers within the trunk highway limits for local highways or city streets designated for and carrying traffic of five tons or more per axle, and that it is necessary to provide a detour outside the limits of the trunk highway for traffic using such local highways or streets to meet local traffic needs, the commissioner may, upon request of the local road authority, expend trunk highway funds on the most practical detour to the extent necessary to provide a route reasonably adequate to carry such detoured traffic. The commissioner may provide temporary traffic control devices on such detours as the commissioner deems necessary."*

After detour and haul roads are released, orders are numbered, dated and kept in a permanent book in the Commissioner's immediate possession.

- B. Unless other arrangements are made, the detour is to be maintained by State personnel. In some cases, the local road authority may prefer to maintain the detour. This is permissible and can be done in accordance with provisions as indicated on Standard Agreement (Form No. 17154.) This maintenance agreement is not required for the cities of St. Paul, Minneapolis or Duluth, as Mn/DOT makes yearly agreements within these cities for maintaining trunk highways with their city limits.
- C. Commissioner to be Custodian. Section 161.09 Orders, Files and Records, Subdivision 1, Minnesota Statutes, is as follows:  
*“Commissioner to be custodian. The official acts and determinations of the commissioner shall be denominated orders. The commissioner shall be the custodian of and shall preserve such orders and the records and files of the Transportation Department and its predecessor departments. Subject to reasonable rules, the orders, records, and files shall be opened to public inspection.”*

## 115.6 DETOURS PROCEDURES

### District

1. The District Engineer, or designee, will confer with the local road authority to establish a detour.
2. The location of the detour will be identified by “highlighting” or “blocking” the route on a map or plat.
3. The District Engineer, or designee, will affirm the information on the plat or map with his signature. The detour will become a temporary trunk highway on the date the trunk highway markers are erected on this designation and will remain in effect until the markers are removed and the local road authority has been compensated for the use of the affected streets or roads.
4. The detour document will be kept by the Construction Project Engineer for the duration of the detour. A copy must be sent to the permit office at the Truck Center in South St. Paul. The appropriate Area Maintenance Engineer should also be kept informed.
5. The date of the detour release and the signature of the local road authority will be affixed to the document. The District Engineer or his designee will affirm the information on the document with his signature.
6. Upon release of the detour, the completed documents will be submitted to the Commissioner’s Order Unit for entry into the permanent record with other orders of the Commissioner of Transportation.

### Commissioner’s Order Unit Leader

7. Receives completed designation, release and a graphic map from the District/Division.
8. Assigns Commissioner of Transportation order number to detour form.
9. Files detour order, designation, release and map in permanent file.

**115.7 HAUL ROADS-PROCEDURES****District**

1. The prime contractor in cooperation with the Construction Project Engineer and the District Engineer's designee will establish the location of the haul road and the date that it will be taken over as a haul road and temporary trunk highway.
2. The location of the haul road will be identified by "highlighting" or "blocking" the route on a map or plat.
3. The District Engineer, or designee, will affirm the information on the plat or map with his signature. The haul road will become a temporary trunk highway, according to the duration dates specified on the document when it is signed by the District Engineer, or his designee.
4. The haul road document will be returned to the Construction Project Engineer until the haul road is released and returned to the local road authority.
5. When the haul road is no longer needed, the Construction Project Engineer will review the haul road with the local road authority. The roadway will be restored to a "condition as good as when taken over as a temporary trunk highway.
6. The date of the haul road release and the signature of the local road authority will be affixed to the document. The District Engineer or designee will affirm the information on the document with his signature.
7. The completed documents will be submitted to the Central Office, Commissioner's Order Unit for entry into the permanent record with other orders of the Commissioner of Transportation.

**Commissioner's Order Unit Leader**

8. Receives completed designation, release and graphic map from District.
9. Assigns Commissioner of Transportation order number to haul road form.
10. Files haul road order, designation, release and map in permanent file.

**PRE-ACQUISITION (5-491.100)**  
**REQUEST FOR APPRAISALS (5-491.116)**

### 116.1 POLICY

The Project Coordination and Finance Unit will compile the data required for the assignment and preparation of appraisals. This data is commonly known as the "Right of Way Package".

### 116.2 PROCEDURE

#### Legal Description and Commissioner's Orders Unit

1. Forwards parcel files to Project Coordination and Finance Unit.

#### Project Coordination and Finance Unit

2. Assembles the appraisal package which includes:
  - ! Original transmittal memo (see copy of memo in Project Coordination and Finance Unit Procedures Manual).
  - ! Parcel sketch
  - ! The duplicate set of titles in the parcel file.
  - ! 1 parcel description (not the original)
  - ! 2 photo copies of the work map.
  - ! 1 copy of building sketch (if parcel has a building).
3. Sends the Valuation Section all of the above package and sends a copy of the "Appraisal Transmittal Memo" to all the units listed on the bottom of the memo.
4. Notes the date of the titles and orders title continuation if appropriate from Legal Real Estate Conveyance Unit. **Titles need to be continued 6 to 8 weeks before the appraisal due date.** If the date on the titles will be over 6 months old at the time the appraisals are due, then they should be continued.
5. If the property has a building, sends a copy of the appraisal transmittal memo for the Relocation and Property Management Unit so a salvage appraisal can be done. A copy of the field title report is also sent for each parcel containing items such as fences, light poles, signs, etc.
6. If the property has an occupied building, sends the Relocation and Property Unit:
  - ! The original building book and 1 copy of it.
  - ! The "Relocation Memo" (which requests a relocation plan to be done for these parcels - see attached memo) and a copy of the appraisal transmittal memo.

7. On all access reconveyances sends the Legal and Real Estate Conveyance Unit copies of:
  - ! Property description
  - ! Titles for that parcel
  
8. Enters the following information into the right of way information system (ROWIS) under Parcel #s:
  - ! The date the parcels were received back from the Description Unit.
  - ! "Appraisal Package to Appraisals" (enter the date sent and the due date).

NOTE: Give a copy of the appraisal transmittal memo and the original descriptions memo to the clerical staff in the Project Coordination and Finance Unit so that the "Descriptions/Orders Status Report" and the "Appraisal Status Report" can be updated.

The copy of the appraisal transmittal memo and the original descriptions memo are to be filed in the "Project File".

**PRE-ACQUISITION (5-491.100)**  
**PREPARATION OF INSTRUMENTS FOR DIRECT PURCHASE (5-491.117)**

**117.1 POLICY**

The preparation of all instruments for direct purchase shall be made in the Legal and Real Estate Conveyance Unit.

**117.2 PROCEDURE****Project Coordination and Finance Unit**

1. Forwards parcel files to Legal and Real Estate Conveyance Unit requesting instruments to be prepared.

**Legal and Real Estate Conveyance Unit**

2. Drafts "Offer to Sell and Memorandum of Conditions" various types of deeds, mortgage releases and other required legal instruments. Parcel files are then returned to Project Coordination and Finance Unit.

**Project Coordination and Finance Unit**

3. Forwards parcel file to Direct Purchase Unit after receiving appraisal, FHWA authority when required, encumbrance requisition, Commissioner's orders, salvage appraisal, and design study report. If there is not a design study report, approval and sign off by the Director of Land Management must be obtained prior the to Direct Purchase Unit receiving the parcel file.

**PRE-ACQUISITION (5-491.100)**  
**TRANSMITTAL TO DIRECT PURCHASE (5-491.118)**

**118.1 POLICY**

All required data must be assembled so that the Department is in compliance with all federal and state rules and regulations before a parcel can be submitted to the Direct Purchase Unit. This parcel data enables the person making the purchase offer to have property information available for his/her use when contacting the landowner.

**118.2 PROCEDURE****Project Coordination and Finance Unit**

1. Prepares prints of right of way map one month prior to appraisal due date. Prepares one print to be submitted to the project engineer in the district for staking the right of way. Outlines parcels to be acquired on two prints to be held until receipt of the first appraisal. Enters the date maps are prepared in ROWIS under project notes.
2. Transmits one print to the District Land Management/Right of Way Supervisor for assignment of right of way staking prior to direct purchase. Enters the date sent in ROWIS. NOTE: Plat acquisition projects do not require a staking map.
3. Receives appraisals from Valuation Section.
4. Determines that Federal Highway Administration authorization and obligation has been completed (when required for federal reimbursement); funds have been encumbered for acquisition; Commissioner's orders completed; titles, field reports, office abstracts, necessary documents, right of way appraisals and salvage appraisals are included in parcel file and that a relocation plan has been prepared.
5. Prepares transmittal memo (See Exhibit A on next page) to Direct Purchase and submits together with parcel files and direct purchase maps to Supervisor of Direct Purchase Unit.
6. Enters the date parcel files are transmitted to Direct Purchase Unit in ROWIS.

EXHIBIT "A"

TRANSMITTAL FOR DIRECT PURCHASE

TO: Acquisition Engineer

Date:

FROM: Pre-Acquisition Engineer

Ch ID:

S.P. \_\_\_\_\_

District: \_\_\_\_\_

Artemis: \_\_\_\_\_

Federal Number \_\_\_\_\_

Project: \_\_\_\_\_

County \_\_\_\_\_

Termini: \_\_\_\_\_

No. of Par. \_\_\_\_\_

Proposed Letting Date \_\_\_\_\_

Parcels Numbered: \_\_\_\_\_

This is to advise that the above referenced parcels have advanced through the procedures checked below and are ready for acquisition.

Funds Encumbered \_\_\_\_\_

FHWA Approval Date \_\_\_\_\_

Options & Conveyances Prepared \_\_\_\_\_

Appraisals Made & Certified \_\_\_\_\_

Commissioner's Orders Signed \_\_\_\_\_

Salvage Appraisal \_\_\_\_\_

Relocation Study \_\_\_\_\_

Design Study Dated \_\_\_\_\_

cc:

File

C.O. Property Management & Relocation, MS 631

C.O. Office of Freight Railroads & Waterways

Railroad Administration Section, MS 470

Dist. R/W Supervisor:

DP Maps: Enclosed \_\_\_\_\_

To Follow \_\_\_\_\_

Sent Previously \_\_\_\_\_

**PRE-ACQUISITION (5-491.100)**  
**PREPARATION FOR EMINENT DOMAIN PROCEEDINGS (5-491.119)**

**119.1 POLICY**

All parcels which cannot be acquired by direct purchase are to be acquired by eminent domain proceedings.

Authority for eminent domain under Minn. Stat §161.20 and Minn. Stat. §117.035:

**161.20 GENERAL POWERS OF COMMISSIONER**

*Subdivision 1. To carry out provisions of Constitution. The commissioner shall carry out the provisions of article 14, section 2 of the Constitution of the state of Minnesota.*

*Subd. 2. Acquisition of property; buildings; relocation of corners; agreements with railroads; contracts. The commissioner is authorized to acquire by purchase, gift, or by eminent domain proceedings as provided by law, in fee or such lesser estate as the commissioner deems necessary, all lands and properties necessary in laying out, constructing maintaining, and improving the trunk highway system including recreational vehicle lanes;...etc.*

**117.035 PROCEEDINGS, BY WHOM INSTITUTED**

*If such property be required for any authorized purpose of the state, the proceedings shall be taken in the name of the state by the attorney general upon request of the officer, board, or other body, charged by law with the execution of such purpose; if by a corporation or other body, public or private, authorized by law to exercise the right of eminent domain, in its corporate or official name and by the governing body thereof; and if by an individual so authorized in the individual's own name.*

**119.2 PROCEDURE****Direct Purchase Unit**

1. Transmits parcels for eminent domain proceedings to the Project Coordination and Finance Unit.

**Project Coordination and Finance Unit**

2. Reviews for possible change in status of ownership which would require a title continuation. A continuation determination is made on the basis of the field title report updating by the purchasing representative during course of negotiation. Requests continuation, if required, of titles and field title reports. (See Sections 104 and 106).
3. Determines that each parcel file contains three copies of description.
4. Checks adequacy of specified time limit for temporary takings with district office. If extension is required, advises description unit leader to amend time limit as stated in the parcel description and to correct authorization map accordingly.
5. Prepares eminent domain proceedings folder and data.
6. Prepares:
  - Listing sheet of parcels for eminent domain folder (salmon sheet)
  - Memorandum to Legal and Real Estate Conveyance Unit listing parcels to be included in the action including the reason each parcel is being placed into eminent domain.

7. Transmits to Legal Description and Commissioner's Orders Unit.

**Legal Description and Commissioner's Orders Unit.**

8. Identifies Commissioner's order numbers on the front of eminent domain folder.
9. Transmits to Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

10. Reviews continued certificates of title and field title reports for possible changes which may have occurred since the office abstract was prepared and updates the office abstract.
11. Reviews the updated office abstract and designates personal service notice or an advertised action.
12. Prepares an address list covering each proceeding showing the names and addresses of all interested parties and prepares names and nature of interest on each description.
13. Drafts the petitions in accordance with Minnesota Statutes Chapter 117.
  - a. The petition describes the desired land and purpose for which it is proposed to be taken.
  - b. The petition, with reference to each parcel of land involved, states the names of all persons appearing of record or known to the petitioner to be the owners of said lands or interested therein. Including all parties the petitioner has been able by investigation and inquiry to discover together with the nature of such interest.
  - c. The petition prays the Court that commissioners be appointed to determine the damages which may be occasioned by the taking, and that such proceedings may be had as are provided by law.
  - d. The petition is signed by the Assistant Attorney General by and on behalf of the Attorney General.
  - e. The notice of Lis Pendens is likewise prepared listing each parcel to be acquired in the same manner as the petition.
14. Forwards request for signing and filing of the petition, notice of les pendens and setting of a hearing date to Assistant Attorney General.

**Assistant Attorney General**

15. Sets date of hearing with Judge of the District Court and notifies Legal and Real Estate Conveyance Unit by memo.

**Legal and Real Estate Conveyance Unit**

16. Receives memo from Assistant Attorney General advising the date for the hearing in district court. Enters information on condemnation docket. Reviews the proceedings and draft.
17. Prepare required number of copies of notices for personal service and advertised actions.
18. Drafts affidavit of non-residence showing names and last known addresses of all parties residing outside of the State of Minnesota. This affidavit states that a copy of the notice has been mailed to each party at the last known address.

19. Sends the advertised notice to a legal newspaper for publishing. Attempts to serve the parties by certified mail. When necessary requests personal service by the sheriffs of the counties where respondents reside for service.
20. Processes returns of service and sheriffs invoice, and processes same for payment. Returns of service are filed in the condemnation file. If a party cannot be found by the sheriff, a decision is made as to the expedient means of acquiring jurisdiction over the respondent (waiver of service, admission of service, stipulation of appearance, etc.)
21. Obtains affidavit of publication from the newspaper editor. Processes bills for payment.
22. Files with the District Court Administrator the following: Affidavit of publication in the advertised action, returns of service in the personal and advertised action, together with the waivers of service, admissions of service, stipulations of appearance, affidavit in support of quick take and other affidavits as needed.
23. Drafts the Order of the Court, Oath of Commissioners and the Report of Commissioners.
24. Gives condemnation folder to Mapping Unit.

**Mapping Unit**

25. Prepares and assembles exhibits pertinent to the hearing on petition and return material to Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

26. Checks material and forwards it with parcel files to Assistant Attorney General.

**Assistant Attorney General**

27. Procedure for hearing on petition, right of way viewings, presentation of testimony and taking report of commissioners are the responsibility of attorneys assigned to condemnation proceedings. See 5-491.305, Eminent Domain.

After Report of Commissioners the attorney reviews the Report of Commissioners and the status of the title to determine the payees and prepares a transmittal memorandum recommending whether or not appeals should be taken.

**Legal and Real Estate Conveyance Unit (Notice of Award)**

28. After the Report of Commissioners is filed, the Legal and Real Estate Conveyance Unit receives a copy of the attorney's transmittal memorandum and also a copy of the report of commissioners. Notice of award is sent out by the Director of the Office of Land Management pursuant to Minn. Stat. Section 117.115, subdivision 2.

*Subd. 2 Within ten days after the date of the filing of the report of commissioners, the petitioner shall notify the following listed persons, by mail, of the filing of the report of commissioners setting forth the date of filing of the report, the amount of the award, and all the terms and conditions thereof as the same pertain to the respondent or party listed:*

*(1) each respondent listed in the petition as having an interest in any parcel in the report.*

*(2) each other party to the proceeding whose appearance has been noted by the court in its order approving the petition under section 117.075; and*

*(3) each respondent's attorney.*

*Such notification shall be addressed to the last known post office address of each person notified. Notice of the filing of the report need not be given to parties initially serviced by publication under section 117.055. The petitioner shall file with the court administrator an affidavit of mailing of the notice, setting forth the names and addresses of all the persons so notified.*

#### **Legal and Real Estate Conveyance Unit**

29. Prepares notices of award and mails to each interested party, executes affidavit of mailing and files it with Court Administrator.

#### **Assistant Attorney General**

30. Prepares memo to finance division relative to changes in payees, because of receipt of disclaimers of interest, satisfaction of mortgages, death of a party of interest, decree of distribution filed in an estate, or for other reason.

**PRE-ACQUISITION (5-491.100)**  
**PERMITS TO CONSTRUCT (5-491.120)**

**120.1 POLICY**

No permits to construct shall be processed by Mn/DOT Districts, Metro Division, or Central Office, without first presenting an offer of just compensation. Under the Uniform Act Title III, owners are entitled to an appraisal, written offer of Fair Market Value, negotiations and payment prior to possession.

**Exceptional Circumstances:**

1. 49 CRF 24.102(J) minimally allows for the SHD to enter a property prior to offer and payment to the owner. It states in part: "In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner."
2. 23 CFR635.309(c)(2)&(3) states Right-of-Way certifications #2 and #3 should occur only in very unusual circumstances. This exception should never become the rule.

**DISTRICTS SHALL MAKE EVERY EFFORT TO HAVE NO PERMITS TO CONSTRUCT**

**120.2 PROCEDURE****District Technician/Real Estate Representative**

1. Extraordinary letting time considerations require approval to approach an uncompensated owner for a temporary permit to construct.

**District Right of Way Engineer/Land Manager**

2. Reviews R/W needs and verbally approves approaching owner for permit to construct.

**District Technician/Real Estate Representative**

3. Meets with owner and acquires owners signature for execution of temporary permit to construct.
4. Sends executed temporary permit to construct to Project Coordination and Finance Office of Land Management.

**C.O. Project Coordination and Finance Unit**

5. Checks over permit, and make makes sure its entered in ROWIS.
6. Places copy in parcel file.
7. Permit is used as a clearance item in the Right of Way Certificate.

NOTE: "Zero Dollar Permits" which are used when no compensation is due do not require review or approval of the District Right of Way Engineer.

C.S. \_\_\_\_\_  
Parcel \_\_\_\_\_  
County of \_\_\_\_\_

TEMPORARY PERMIT TO CONSTRUCT

The State of Minnesota has by its Commissioner of Transportation established and designated the route of Trunk Highway No. \_\_\_\_\_ in \_\_\_\_\_ County, Minnesota.

It is necessary that the State of Minnesota use for highway purposes real property situated in \_\_\_\_\_ County, Minnesota, described as follows:

The undersigned, being the owners of the above described real property, understand that they are not required to surrender possession of real property until the purchase price has been made available and are not required to surrender lawfully occupied real property without at least 90 days notice. By this instrument, the undersigned waive these rights and give the State of Minnesota an immediate right of entry and give the State of Minnesota an immediate right of entry and permit to construct, maintain and operate the trunk highway.

The undersigned acknowledge having received an offer by the State of Minnesota on \_\_\_\_\_ to purchase the above described property.

The State of Minnesota agrees to proceed as soon as possible to acquire the necessary right of way for said highway as provided by law.

It is necessary that the actual construction of said highway be commenced immediately and completed without interruption.

For a valuable consideration, the undersigned hereby grant to the State of Minnesota, the right to go upon said real property and construct said highway immediately and to continue to work the same until fully completed, and to travel the same when completed. The undersigned waive all right of final payment prior to the State of Minnesota taking possession of the land as required by U.S. Public Law 91-646, Title III, Section 301(4) with the knowledge that such act in no way jeopardizes or compromises the damages to which the undersigned may be entitled pursuant to the eminent domain action.

Dated: \_\_\_\_\_

Owners: \_\_\_\_\_

\_\_\_\_\_

**PRE-ACQUISITION (5-491.100)**  
**HARDSHIP ACQUISITION, PROTECTIVE BUYING AND**  
**SPECIAL PROJECT ADVANCEMENT (5-491.121)**

## 121.1 POLICY

### A. NORMAL RIGHT OF WAY ACQUISITION

Mn/DOT right of way acquisition normally occurs after the following tasks have been accomplished:

- ! Environmental clearance (including location approval) has been obtained ie, ROD, FONSI, CE determination or equivalent state documents.
- ! A final geometric layout is approved for projects requiring one.
- ! The construction limits have been determined to assess actual R/W needs for partial takings. (Construction limits are not necessary for definite full takings.)
- ! The pre-acquisition phases which include ordering titles, district field and office work, central office operations and appraisals are complete.
- ! Approval determinations have been made on public properties subject to the provisions of 23 CFR 710.503 (a) 3 (AKA 4f, see 23 CFR771.135) and the procedures of the advisory council on Historic Preservation are completed on 16 USC 470 (f) (Historic Properties) in accordance with 23 CFR 710.503 (a) 4.

The above preacquisition practices help to ensure federal approvals of funds from design through completion of construction and also result in the most efficient use of District and Central Office staff. However, in order to expedite project development or address landowner needs, there may be cases where portions of the project right of way acquisition may begin earlier than normal.

### B. HARDSHIP AND PROTECTIVE BUYING

Mn/DOT may acquire right of way, within the limits of a proposed highway corridor, prior to completion of normal routine preacquisition activities if it meets the "Hardship or Protective Buying" criteria discussed below and it is in the public interest to make the acquisition.

Under 23 CFR 710.503 (a) "Hardship and Protective Buying" can normally be entered into only after:

- 1) The project is included in the currently approved STIP;
- 2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771.

**"Required Activities":**

- ! Properties subject to Section 4F (Parks, etc.) or 16 USC 470 (F) (Historic Properties) cannot be acquired under hardship or protective Buying.
- ! Acquisition of the right of way under hardship or protective buying may not influence the need to construct the project, the selection of location, or the eventual required environmental assessment.
- ! Acquisition of right of way must comply with the Uniform Relocation Act of 1970 & Title VI of the Civil Rights Act of 1964.

**121.2 HARDSHIPS: Definition, Determination, Documentation****A. DEFINITION;**

23 CFR 771.117 (d) 12 states: "Hardship Acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others."

**B. DETERMINATION;**

HARDSHIP ACQUISITION WILL TYPICALLY FALL UNDER ONE OF THE FOLLOWING:

**1. Health & Safety**

- ! Advanced age, debilitating illness or injury, or other major handicap of a long-term nature, where present housing facilities are inappropriate or cannot be maintained by the owner.
- ! Other extraordinary conditions which pose a significant threat to the health, safety, or welfare of the owner-occupant or a member of their household for whom they are responsible.

**2. Financial**

- ! Litigation (probate) supported by copies of estate proceedings documents verifying the indicated situation.
- ! Loss of employment as verified by employer or other source and the necessity of relocation to secure other employment.
- ! Retirement (cannot afford to maintain current residence) verified by data showing amounts actually spent on maintenance as compared to rent, income, etc.
- ! Pending mortgage or tax foreclosure, to include copies of actual documents.
- ! Transfer of job, as verified by employer.
- ! Any documented circumstance similar in impact to those stated above.

**C. DOCUMENTATION;**

Qualifications for hardship acquisitions must be fully documented. Examples of acceptable documentation include, but are not limited to the following:

- ! Doctor's statement - a doctor's statement fully and clearly describing why the patient should relocate from a medical viewpoint.
- ! Real estate broker's certification - a real estate broker's statement indicating that the property is not saleable at the "pre-project" market value.

- ! Financial statement - where financial difficulties constitute the basis for hardship, a reliable, accurate, and complete presentation of the facts should suffice.
- ! Letter from employer - a letter from the employer affirming that the owner is to be transferred to a specified location would be recognized. A similar documentation regarding loss of employment would constitute rationale for advance hardship acquisition.
- ! Court records - copies of documents relating to any legal actions which provide support for the hardship basis.
- ! Income tax return - a verification by Mn/DOT as to that part of the return necessary to support the hardship circumstance.

### 121.3 PROTECTIVE BUYING: Definition, Determination, Documentation

#### A. DEFINITION:

Protective buying in right of way acquisition is done to "prevent imminent development and increased costs of a parcel which would tend to limit the choice of highway alternatives". (See 23 CFR 710.503 (b)).

#### B. DETERMINATION:

Protective buying may be considered where it can be established that there will be substantial and imminent property development of a nature that would unduly restrict the only reasonable highway location alternative. In such circumstances, protective buying may be the only practical method of alleviating the problem. Mn/DOT may determine to proceed with protective buying to protect the greater public interest.

#### C. DOCUMENTATION:

Any documents used in the above determination shall be kept in acquisition file for future reference.

### 121.4 HARDSHIP ACQUISITION PROCEDURE

#### Property Owner

1. Makes written request to the District Engineer for hardship acquisition, outlining the hardship being caused by the proposed highway corridor.

NOTE: If the property owner writes to the Central Office, the Central Office by transmittal forwards the hardship request letter to the District Engineer for review and recommendation and carbon copies the property owner.

#### District Engineer

2. Reviews hardship acquisition and forwards to the District Right of Way/Land Management Engineer for investigation.

#### District Right of Way/Land Management Engineer

3. Has district staff:
  - a. Acknowledge receipt of owners letter and determine if a notice or public hearing has been held (see Section 121.1B)

- b. Obtain a determination from the District Design Engineer that the property in question is required for the proposed highway corridor
  - c. Review hardship acquisition request to determine if request meets hardship criteria (see section 121.2) if not, report findings to District Engineer
  - d. Obtain market data information (old "full & true")
  - e. Obtain a preliminary cost estimate from either District or Central Office qualified valuation staff
  - f. Prepare staff report and appropriate findings and recommendations
  - g. Determine if a categorical exclusion is appropriate for the acquisition
4. Makes written recommendation to the District Engineer with supporting information and documentation regarding the hardship acquisition request.

#### **District Engineer**

5. Recommends approval or disapproval of Hardship Acquisition request and if approves forwards District recommendation packages to Project Coordination and Finance Unit, Central Office for processing approvals.

#### **Project Coordination and Finance Unit**

6. Processes right of way package under same policy and procedures as for any right of way acquisition (see Mn/DOT Manual Chapter 5-491.100)

Note: If the project has federal aid involvement in the acquisition, Central Office Project Coordination prepares a letter for the Deputy Commissioner's signature to the FHWA requesting authorization to acquire right of way pursuant to hardship. (See Section 121.2 B.) This letter should be sent as soon as possible after the Director of Office of Land Management approves of the District request for a hardship acquisition.

### **121.5 PROTECTIVE BUYING PROCEDURES**

#### **District Engineer**

1. Submits district recommendation package to Project Coordination, Central Office for approvals/processing. (The same general procedures used for Hardship Acquisition apply to Protective Buying, see Section 121.4.)

#### **Project Coordination and Finance Unit**

2. Processes right of way package under the same policy and procedures as for any right of way acquisition. (See Mn/DOT Manual, Chapter 5-491.100).

Note: If the project has federal aid involvement in the acquisition, Central Office Project Coordination prepares a letter for the Deputy Commissioner's signature to the FHWA requesting authorization to acquire right of way pursuant to protective buying. (See Section 121.3 B.) This letter should be sent as soon as possible after the Director of Land Management approves of the District request for a protective buying acquisition.

## 121.6. SPECIAL PROJECT ADVANCEMENT

Mn/DOT may under certain circumstances want to expedite project development and acquire right of way earlier than as prescribed in Sections 121.1 A. and B.. When this extraordinary "Early Acquisition" is undertaken, a risk assessment must be made considering the following factors:

- ! Status of environmental and design studies (are they nearing completion?)
- ! Relocation of homes and businesses (because of greater impacts of going too early)
- ! Property type and use (impacts on developed land versus undeveloped land)
- ! Interest being acquired (permanent versus temporary)
- ! Value of properties (cost versus risk)
- ! Political circumstance/public attitudes (are they supportive or is there organized opposition?)
- ! Project priority
- ! Right of way activities status
- ! Dollar savings
- ! When construction limits are not available (estimated corridor width only) the inability to justify the need in court proceedings

1. Approval:

"Special Project Advancement" must be approved of by both the District Engineer and the Director Office of Land Management.

2. Funding:

"Special Project Advancement" may be done only on projects where there is no federal funding in the right of way activities. However, in order not to jeopardize federal participation in subsequent project activities (e.g., final design, construction, etc.) the project must comply with "**required activities**" listed above in 121.1B and eventual environmental review and clearance as well.

**PRE-ACQUISITION (5-491.100)**  
**RIGHT OF WAY CERTIFICATE (5-491.122)**

### 122.1 INTRODUCTION/PURPOSE

The "Right of Way Certificate" is a status report. It is a written statement declaring (certifying) that the status of right of way acquisition for a specific highway project is as represented in the statement. Its purpose is to identify and explain the status of acquisition of all right of way necessary for a specific highway project. The right of way certificate is one of the steps of the larger Project Development Process for advancing a highway project to the construction stage.

This chapter of the manual will be largely based on 23 CFR 635.309, and will describe the standards and procedures for preparing a right of way certificate sufficient to enable FHWA to authorize Mn/DOT to go forward with advertising a Federal-aid highway project for bids. These same standards and procedures are also to be applied to the preparation of a right of way certificate covering a state-funded project.

The right of way certificate has a dual role. It certifies to FHWA the items required by 23 CFR 635.309. It notifies the Mn/DOT Director of Engineering Services of the status of several additional items of concern (these items are listed in Par. 122.5).

#### **NOTE: PROCESS "A" PROJECTS**

For projects that do not require additional Right of Way or agreements with utilities, railroads, municipalities, etc., the District/Division Engineer or designee is responsible for preparing the Right of Way Certificate. Process "A" Right of Way Certificates are always "Class I" and address right of way status, utility involvement and right of way clear of encroachments. Every other project uses the "B" process. All "B" process projects are certified by the Office of Land Management.

### 122.2 Mn/DOT POLICY ON R/W STATUS AT ADVERTISEMENT

The above Federal Regulation clearly expresses the intent that problems involving occupied right of way be resolved before advertisement so as to avoid the "Class 3" certification (i.e., 635.309(c)(3)). Mn/DOT policy is therefore to schedule projects so that the right of way is clear\* by the advertisement date. Occasionally, however, it may not clear until after the advertisement date. When it appears that the right of way will not be clear at advertisement, the R/W Certificate Technician must compile information on the prospect of the right of way clearing by the letting date, or by the award date, or, if after award, by *what* date. This information is then used by the Director of Engineering Services in conjunction with the Chief Engineer in deciding whether or not to advance the project.

\* The term "clear" means that Mn/DOT has acquired full right of title and possession, and that occupants have vacated, been paid in full (subject to appeals in eminent domain actions), and been afforded relocation rights under the Uniform Act. The term does not refer here to the right of way being cleared of structures.

### 122.3 FHWA REGULATIONS

#### A. Advertising in general:

##### ***23 CFR Sec. 635.112(a) Advertising for bids.***

*(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization by the [FHWA] Division Administrator.*

B. Advertising detailed statements:

FHWA approval of Mn/DOT's advertising for bids is controlled by 23 CFR 635.309, which sets out in detail the statements that must be contained in the Mn/DOT Right of Way Certificate. Pertinent parts are set out below:

***Sec. 635.309 Authorization.***

*Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:*

- .....
- (b) *A statement is received from the State, either separately or combined with the information required by Sec. 635.309(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be underway concurrently with the highway construction.*
  - (c) *A statement is received from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocatees adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:*
    - (1) *All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.*
    - (2) *Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.*
    - (3) *The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. The State may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. When the State requests*



**Bare land (non-occupied land) - Direct Purchase**

Mn/DOT must accept the owner's offer to sell by advertisement date. Mn/DOT must have paid for the property and recorded the deed by two weeks before letting.

Although discouraged, right of entry can be obtained by means of a permit to construct. Such permit must be obtained at least two weeks before letting.

**Bare land (non-occupied land) - Eminent Domain**

Judge must sign order appointing the condemnation commissioners by two weeks before letting, payment made or deposited with the Court. The "90 day period" must be projected to expire before award date.

In quick take condemnation, the compressed time between the District Court signing the "Order" (Order appointing commissioners) and the letting requires the following steps by the District Land Management/R/W Engineer:

1. Include the Certification Technician as a recipient of the Eminent Domain Proceedings Report (Mn/DOT Form 2579) - for initial submittal only.
2. Fax this report to the Certification Technician within 24 hours after District Court has signed the "Order".

**Railroad Agreements and Utility Agreements**

These agreements must be 1) signed by the railroad/utility company and received by Mn/DOT prior to letting, and 2) fully executed — signed by the Department of Administration — prior to award. Advertise if confident that agreements will be received by letting date. Hold up award until fully executed.

**Inter-agency Agreements, Municipal Agreements, and Traffic Signal Cost-Sharing Agreements**

Use same guide as listed above for Railroad/Utility Agreements.

**Leases**

Verify that all leases on the project will be terminated prior to advertisement and that the property will be vacant.

**Permits from Corps of Engineers, MPCA, and other agencies**

District Office should have permits in hand by advertisement date and not later than two weeks before letting date.

**122.5 GUIDANCE ON TERMS USED & AREAS OF REVIEW****Construction Limits**

All construction work must be done within the limits of acquired permanent right of way, within areas covered by temporary construction easements, or within areas otherwise covered by appropriate agreements. For example, roadway cut and fill slopes, borrow pits adjacent

to the highway, gravel pits, waste material disposal areas, stream channel change areas, drainage ditch alteration areas, and building removal areas all must be within acquired land areas or covered by easements or permits.

**Permanent Highway Facility**

All permanent parts of the highway must be within the limits of the permanent right of way.

**Right of Entry**

Vacate date (Mn/DOT right of entry date) must be established for each parcel. This will determine the class of R/W certificate to be issued.

**Payment**

In direct purchase, purchase price must be paid to the landowner.

Under the quick take statute (M.S. 117.042), the amount of state's appraised value must be paid to landowner or deposited with the Court.

In regular condemnation or in quick-take condemnation, if award has been made, award amount must be paid to landowner.

If appeal is pending, three-fourths of the award amount (but not less than the state's appraised market value) must be paid to landowner.

**Utility Agreements**

Agreements between Mn/DOT and various utilities must be executed covering 1) use and occupancy of the right of way by the utility facilities, 2) relocation of utility facilities and costs to be paid by each party, or 3) acquisition of replacement utility right of way by the utility company or by Mn/DOT. (If Mn/DOT acquires replacement right of way, use the same rules above that apply to Mn/DOT acquiring highway right of way.)

**Railroad Agreements**

Agreements between Mn/DOT and a railroad company must be executed covering 1) Mn/DOT use of RR property, 2) adjustments to RR facilities, or 3) acquisition of replacement right of way by the RR company or by Mn/DOT on behalf of the RR. The agreement will typically describe the work to be performed by RR and by Mn/DOT and the cost to each. (If Mn/DOT acquires replacement right of way, use the same rules above that apply to Mn/DOT acquiring highway right of way.)

***23 CFR 635.307 Coordination***

*(a) The right-of-way clearance, utility, and railroad work are to be so coordinated with the physical construction that no unnecessary delay or cost for the physical construction will occur.*

**Building Removal Dates**

Dates must be established for removal of any buildings by any person or entity other than the state's contractor for the project.

Buildings sold by sealed bids.

Owner-retained buildings.

Buildings in a separate demolition contract.

**Drainage Ditches**

The county board or joint county ditch authority must have issued its order allowing a minor alteration or change in a public drainage ditch system.

**Permits under Public Water Laws**

Permits must be applied for by District Office (Hydraulics Engineer or Project Manager) during the detail design phase of project development (five to six months prior to letting date). District Office should have permits in hand by Advertisement date and not later than two weeks before letting date.

Federal -- Sect.404 Permit - Corps of Engineers (dredging or fill in navigable waters of U.S.)

Sect.10 Permit - Corps of Engineers (work over, in, or under navig. waters of U.S.)

U.S. Coast Guard Permit (bridges over navig. waters.)

State -- DNR Permit (State waters)

Local -- Watershed District Permit

**PCA Permit Air Quality**

NPDES - PCA (Natl. Pollutant Discharge Elimination System administered by PCA)

**Gravel Pits**

Agreements must be executed covering gravel pits, borrow pits, and waste material areas required for the project.

**Commissioner's Orders**

The Commissioner's orders are on file covering all permanent and temporary right of way for the project.

**# Non-encroachment Statement**

The District Engineer's statement of non-encroachment status has been received. (See Par. 122.9.)

**# Relocation and Housing Assurances**

The District Engineer's statement has been received giving the following assurances:

Displaced people have been relocated into decent, safe, and sanitary housing,

or

Such housing is available. (Include a description of the parcel from which the person will be displaced and a description and address of the available housing.)

**# Municipal Approvals**

The District Engineer's statement regarding municipal approvals has been received. (See Par. 122.10).

# Certificate Technician should give District Right of Way Engineer a timely reminder that preparation of these three statements is a District responsibility.

**122.6 INFORMATION FOR R/W CERTIFICATE**

For all projects that require new right of way or access control, approximately 16 weeks prior to letting the Certificate Technician shall submit to the District Land Management/Right of Way Engineer a report listing all parcels needed for the project. The report shall include such data as offer dates, acceptance dates, payment dates, and if eminent domain, the status thereof.

By 11 weeks prior to letting the District Office shall submit the following information to the Certificate Technician for all parcels which are not yet clear at that time:

Parcel numbers involved

Explanation of the occupancy situation

Offer dates, condemnation filing dates, and title and possession dates

Occupant relocation plans, availability of replacement properties, and probable relocation dates

Anticipated date parcel(s) will clear

If, at the time the District Office submits the above information to the Certificate Technician, it appears that the status of a parcel or parcels will not meet the status standards discussed in 122.4 RIGHT OF WAY STATUS - NORMAL PROJECTS, the District Office must justify why it is in the public interest to advance the project rather than waiting until all R/W clears. Prior to advertisement, this public interest finding must be approved by the Director of Engineering Services/Assistant Chief Engineer. FHWA must also approve the public interest finding for any project that requires Federal-aid Plans, Specifications and Estimates (PS&E) approval.

### 122.7 PREPARATION OF R/W CERTIFICATE

Following receipt of R/W information from the District Office, the Certificate Technician will secure prints of right of way maps, construction plans, and proposed specification special provisions for the project. The Certificate Technician will also secure whatever other information is needed from R/W files and from Central Office or District personnel so as to be able to determine the right of way clearance status.

The content of the certificate must satisfy the requirements of 23 CFR 635.309. This includes the following:

- ! A certification that R/W has been acquired in accordance with federal and state directives;
- ! A certification that all individuals and families have been relocated into decent, safe, and sanitary housing or that adequate replacement housing has been made available to relocatees in accordance with Federal and State directives;
- ! A certification that steps relative to relocation advisory assistance and payments as required by federal and state directives have been taken;
- ! Identification of parcels which are not yet clear, including the parcel numbers, addresses, and anticipated clear dates;
- ! Status of utility agreements, RR agreements, and other agreements and permits needed for the contract;
- ! A certification concerning the existence of encroachments;
- ! Status of plan approval;

The Certification Technician must advise the Special Provisions Engineer of provisions needed to cover uncleared R/W. Parcels where statutory waiting periods will expire before letting need not be mentioned.

Address the certificate to the Director, Engineering Services Division.

Submit the certificate to the Director, Office of Land Management, for signature.

At least 7-1/2 weeks before the letting date, forward the signed right of way certificate to the Director, Engineering Services, and a copy to the Special Provisions Engineer. On Federal-aid Plans, Specifications and Estimates (PS&E) projects, the Special Provisions Engineer will forward a copy of the right of way certificate to the State Pre-Letting Engineer who will in turn forward it to FHWA as part of the "Request for Authorization to Advertise." **(FHWA Authorization to Advertise is made by the Tuesday before the Friday Advertisement Date.)**

### 122.8 COORDINATION FOLLOWING ADVERTISEMENT

After advertisement, if it appears that parcels will not clear to the extent indicated in the Special Provisions, the Chief Engineer must decide either to (1) pull the project from the Letting or (2) have the Special Provisions Engineer put out an addendum advising of the changes and notifying bidders that the contractor will have to temporarily stay out of these areas. Attempt to give bidders information as to the expected date parcels will clear. (Addendums are sent out at least ten days before the letting.)

As parcels clear and agreements are signed, report revised status using the same procedure as described above for issuing the right of way certificate, confining discussion, however, to only the problem areas. Issue revised reports as degree of change in status warrants.

Prior to letting, the Certificate Technician must ensure that all right of way not covered by special provisions has cleared.

If the project is FHWA-authorized and there are contingencies, FHWA must be advised of clearance prior to letting.

### **122.9 ENCROACHMENTS**

State law prohibiting encroachments is found in Minn. Stat. 160.27, subd. 5(7).

The Federal Regulation prohibiting encroachments on federal-aid highways is found in 23 CFR 710.403 (a).

*(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA.*

The term encroachment means any building, fence, sign, billboard or other structure or object of any kind (with the exception of public and private utilities) placed, located, or maintained in, on, under, or over any portion of the highway right of way.

Awnings, marquees, on-premise advertising signs, and similar overhanging structures supported from buildings immediately adjacent to the highway right of way, at locations where there is a sidewalk on the right of way extending to the building line, and which do not impair the free and safe flow of traffic on the highway, may be permitted to remain. But this applies only where Mn/DOT owns easement; encroachments are not allowed on fee owned right of way.

Permission for overhanging signs is not to be construed as being applicable to those signs supported from poles constructed outside the right of way line and not confined by adjacent buildings. There may be situations where intermittent buildings are set back from the right of way and buildings on adjacent lots are constructed flush with the back of the sidewalk. Signs advertising the enterprise conducted in the set-back building would be permitted to overhang the sidewalk from a pole support to the same degree as if supported from a building.

### **122.10 ENCROACHMENT POLICY**

A construction project will not be certified by the Director of the Office of Land Management until receipt of the District Engineer's statement that all encroachments have been removed or definite arrangements made for their removal. Any other proposed disposition must be so noted in the non-encroachment certificate.

In no event shall an encroachment be allowed to remain on any project unless it is determined that such encroachment will in no way impair the highway use of the land or interfere with the free and safe flow of traffic on the highway.

### **122.11 ENCROACHMENTS PROCEDURE**

At least 11 weeks prior to the letting date the District Engineer shall furnish the Director of the Office of Land Management with a non-encroachment statement for each construction project, attesting that all existing encroachments have been eliminated.

If, due to extenuating circumstances, the encroachment should remain, the District Engineer shall explain the circumstances in the non-encroachment statement and include recommendations for disposition. When the right of way is certified by the Director of the Office of Land Management, these recommendations will become a part of the right of way certificate.

**District Engineer**

1. Prepares a separate non-encroachment statement for each construction project, at least 11 weeks prior to the letting.
2. Explains any extenuating circumstances to justify allowing an encroachment to remain on the right of way and gives recommendations therefor.

**Director of the Office of Land Management**

3. Receives non-encroachment statement from the District Engineer and forwards it to the Right of Way Certificate Technician, who will use it in preparing the right of way certificate.

**122.12 MUNICIPAL APPROVALS**

For requirements as to municipal approvals, see Minn. Stat. §§161.17 through 161.177. The Transportation District Engineer (acting through the District Design Engineer/Project Manager) will conduct environmental impact hearings and municipal hearings and will secure hearing transcripts and municipal approval resolutions (the "Hearing Package"). On Federal-aid projects the District Design Engineer/Project Manager will submit copies of the transcripts and resolutions directly to FHWA. (See Highway Project Development Process Manuals.) Correspondingly, it is the District Design Engineer/Project Manager who will furnish the municipality with a set of final construction plans pursuant to Minn. Stat. 161.77. This is not the responsibility of the Certificate Technician.

A construction project will not be certified by the Director of the Office of Land Management until receipt of the District Engineer's statement that the statutes governing municipal hearings and approvals have been complied with.

**Transportation District**

1. Prepares a separate statement regarding compliance Engineer with the municipal hearings and approval statutes for each construction project, at least 11 weeks prior to the letting. Includes statement that final construction plans conform to the layout plan approved by municipality.

**Director of the Office of Land Management**

2. Receives the statement from the District Engineer and forwards it to the Right of Way Certificate Technician, who will use it in preparing the right of way certificate.

**PRE-ACQUISITION (5-491.100)**  
**FINAL CERTIFICATE (5-491.123)**

### 123.1 POLICY

After all parcels have been acquired in an eminent domain proceedings and all appeals are completed a "Final Certificate" is prepared for the proceedings.

Legal Description and Commissioner's Orders Unit shall prepare all revised descriptions caused by dismissals or stipulations of change after the petition is filed.

The Legal and Real Estate Conveyance Unit shall prepare the final certificate and process it to completion.

***MINN. STAT. §117.205 FINAL CERTIFICATE***

*Upon completion of the proceedings the attorney for the petitioner shall make a certificate describing the land taken and the purpose or purposes for which taken, and reciting the fact of final payment of all awards or judgments in relation thereto, which certificate shall be filed with the court administrator and a certified copy thereof filed for record with the county recorder; which record shall be notice to all parties of the title of the petitioner to the lands therein described.*

### 123.2 PROCEDURE

#### **Assistant Attorney General**

1. By memo advises Legal and Real Estate Conveyance Unit of the completion of action.

#### **Project Coordination and Finance Unit**

2. Finance Group by memo advises Legal and Real Estate Conveyance Unit that the required payments have been made in the specific action.

#### **Legal and Real Estate Conveyance Unit**

3. Attorney reviews parcel files and drafts the final certificate.
4. The final certificate is signed by Assistant Attorney General.
5. The final certificate is then sent to the following offices for filing:
  - a. Court Administrator
  - b. County Auditor
  - c. County Recorder
  - d. Registrar of Titles
  - e. Commissioner, Department of Finance

**PRE-ACQUISITION (5-491.100)**  
**PUBLIC UTILITIES (5-491.124)**

## **124.1 POLICY**

When real estate to be acquired by the state for highway right of way is owned in fee by a public utility or is encumbered with a public utility easement it is necessary to properly determine the value or replacement cost of the property interests. To provide the necessary maps, titles, descriptions and other preacquisition information the procedure below is used.

For detailed procedures of the Utility Agreements Unit refer to the Utility Manual.

## **124.2 PROCEDURE**

### **District Land Management/Right of Way Engineer**

1. Sends one reproducible print of basic right of way map showing a preliminary right of way line to the Utility Agreements Unit. This action is normally taken at the same time as titles are ordered for the entire project. (See procedure in 5-491.103).

### **Utility Agreements Unit**

2. The Utility Agreements Unit requests copies of unrecorded easements from the respective utility companies within the areas where right of way is to be acquired.
3. Replies received from the various companies regarding easements will be forwarded by Utility Agreements Unit to the District Right of Way Engineer.

### **District Land Management/Right of Way Engineer**

4. Receives utility correspondence. Forwards utility correspondence, titles and other material to the Real Estate Representative for utility field title search.

### **Real Estate Representative**

5. Prepares a field report and full and true valuation. Forwards to District Right of Way Technician.

### **District Right of Way Technician**

6. Spots the titles and utility easements on right of way map. Indicates on the parcel caption whether the utility easement is encumbered or unencumbered and if it is a blanket easement.
7. Returns all information pertaining to the utility easement as well as all other pertinent title information on the project, to the Central Office Right of Way Project Coordination and Finance Unit.

### **Project Coordination and Finance Unit**

8. Processes the utility easement along with the other parcels either as a part of the parcel it affects or as a separate parcel if owned in fee. When a utility company owns the affected property in fee Mn/DOT will acquire the fee interest.

9. Sends to Description Unit for legal descriptions.

#### **Legal Descriptions and Commissioners Orders Unit**

10. Prepares legal description of the parcels and returns them to Project Coordination and Finance Unit.

#### **Project Coordination and Finance Unit**

11. After the right of way parcels are returned from the Description Unit these parcels are separated from the easement parcels. This is done when the appraisal package is prepared.

NOTE: The utility parcels are not sent with the appraisal package and the Utility Agreements Unit does not need a print of the work map. The Utility Agreements Unit works closely with the designers and they will obtain any print required.

12. Sends utility parcels to the Utility Agreements Unit at this time.

NOTE: A follow-up should also be made in 30 days after the transmittal to determine status. If the Utility Agreements Unit determines that they will not handle the acquisition, the parcel should be returned within 30 days by memo to the Project Coordination and Finance Unit. Then an appraisal package for the utility parcel will be prepared. It will be appraised and acquired along with the other parcels on the project.

#### **Utility Agreements Unit**

13. When a utility company has an easement on a plat reference project the Utility Section will request a description be prepared by the Legal Description Unit for their use on the quitclaim document. When the easement is not on a plat reference project the Utility Agreements Unit prepares the description for the quitclaim document. The quitclaim instruments are drafted by the Legal and Real Estate Conveyance Unit. The Utility Agreements Unit sends all utility quitclaim documents to the Utilities for signing. Upon completion of the acquisition of utility easements the documents are sent to the Direct Purchase Unit to process.

#### **Direct Purchase Unit**

14. Forwards the documents to the Project Coordination and Finance Unit.

#### **Project Coordination and Finance Unit**

15. Sends to Legal Description unit to prepare file, and subsequently returns it to Project Coordination and Finance, who enters it in the Right of Way Information System (ROWIS).
16. Forwards the utility parcels to Direct Purchase Unit for payment and recording.

**PRE-ACQUISITION (5-491.100)**  
**RAILWAY NEGOTIATIONS (5-491.125)**

### 125.1 POLICY

Acquisition of highway right of way over operating railway right of way (and associated plant improvements) requires in depth consideration of the impacts of the planned road construction and real estate acquisition on the continuous operation of the railroad.

It is Mn/DOT policy that highway right of way acquired across operating railway right of way must be obtained as an easement interest only. Right of way being acquired from non-operating, railway property is obtained in fee simple unless the owner can justify a lesser interest.

The construction plan, profile and cross section sheets must be completed by the Design Engineer/Supervisor (in accordance with Sections 4-8.02, 4-8.04, 9-2.05 and 11-6.0 of the Road Design Manual) and forwarded to the District/Division Right of Way Engineer/Supervisor in accordance with project delivery schedule defined in ARTEMIS. Concurrent to this submittal, the Design Engineer/Supervisor must formally notify the Office of Freight Railroads and Waterways of the planned acquisition of real estate rights from an operating railroad company. This notification is required to determine if a construction and maintenance agreement will be required. The railroad company generally will not sign a conveyance document until such an agreement has been executed.

The Design Engineer/Supervisor is reminded that sufficient review time must be afforded to the Office of Land Management so as to identify potential difficulties which could impact the negotiation process with the railroad company.

### 125.2 PROCEDURE

#### **Project coordination and**

1. Follow the procedure set forth in 5-491.118 (Transmittal to Direct Purchase)

#### **Direct Purchase Unit**

2. Records receipt of the railway parcel, following the same procedure set forth for regular right of way acquisition (See 5-491.302)
3. Negotiates with the railway company for right of way. After negotiations have been resolved, following the same procedure thereafter as in processing any other parcel for payment. (See 5-491.303).

**PRE-ACQUISITION (5-491.100)**  
**MAINTENANCE SITES (WITH & WITHOUT BUILDINGS) (5-491.126)**

## 126.1 POLICY

There are two categories of maintenance sites:

- A. **Maintenance storage sites (with temporary buildings) to be used for storage of material.** These are acquired using the standard procedures for right of way acquisition (salt storage sheds may be erected).
- ! Funds for payment will come from the right of way budget in the same manner as encumbrances for right of way.
- B. **Maintenance sites on which buildings will be constructed.** Sites in this category require legislative approval for initial acquisition of the land. Supplemental parcels may be purchased by various department funds.

## 126.2 PROCEDURE

### 1. Capital Budget Estimates and Request (for maintenance sites with buildings)

The establishment of the Department's Capital Building Program budget request is the responsibility of the Building Engineer, Central Office Building Section. During the developmental stages of the Capital Building request, the Building Engineer will establish a cost estimate for the building and the land acquisition for each site requested by the Department. Assistance in estimating the land acquisition cost will come primarily from the District upon request from the Building Engineer.

### 2. Legislative Authorization

The Minnesota Department of Transportation recommends acquisition of lands and construction of buildings to the Legislature. The estimated cost of the land and construction of the building is a part of this recommendation. Land acquisition normally precedes building requests by several biennia.

Upon approval by the Legislature the lands are acquired under the standard procedures for right of way acquisition, initiated by the District.

### 3. Site Development Scheduling

The Mn/DOT Building Engineer in consultation with District staff will establish the site development schedule for land acquisition and building construction. It will be the Building Engineer's responsibility to request that the District Right of Way Engineer establish a right of way package for each site.

### 4. Acquisition Process

The right of way package, including titles and an authorization map will be submitted to the Project Coordination and Finance Unit, Central Office of Land Management by the District R/W Engineer. The authorization map should include Form 25297 (Request for Authority for Acquisition of Maintenance Storage Site or Stockpile Site) with the proper signatures.

After the authorization map has been approved, the Office of Land Management **will process the acquisition as any other right of way acquisition\*** (description written, order appraisals, and prepare documents and a parcel cost estimate sheet). A copy of the estimate sheet will be sent to Office of Maintenance, Budget and Finance Unit, to set up funds for acquisition costs. Upon certification of the appraisal, the parcel file will be sent to the District R/W Engineer for direct purchase processing.

Overall responsibility for monitoring the progress of the site acquisition rests with the District R/W Engineer.

**\*NOTE:** Maintenance building sites and maintenance storage sites, whether with or without buildings, are processed for acquisition the same as trunk highway right of way with two exceptions:

- ! The staff authorization is processed the same as set forth in 5-491.108, except that Form 49-2-156 is used on the authorization map to obtain the proper signatures.
- ! The transfer of funds from the Capital Building Budget is initiated when the parcel's "Request for Encumbrance of Funds" is sent to the District for approval.

**PRE-ACQUISITION (5-491.100)**  
**EXCESS LANDS ACQUISITION (5-491.127)**

**127.1 POLICY**

Acquisition of excess lands shall be in accordance with Minn. Stat §161.23, as follows:

***MINN. STAT §161.23 EXCESS ACQUISITION***

*Subdivision 1. Acquisition of entire tract. On determining that it is necessary to acquire any interest in a part of a tract or parcel of real estate for trunk highway purposes, the commissioner of transportation may acquire in fee, with the written consent of the owner or owners thereof, by purchase, gift, or condemnation the whole or such additional parts of such tract or parcel as the commissioner deems to be in the best interests of the state. Any owner or owners consenting to such excess acquisition may withdraw the consent at any time prior to the award of commissioners in the case of condemnation proceedings, or at any time prior to payment in the case of purchase. In the event of withdrawal the commissioner shall dismiss from the condemnation proceedings the portion of the tract in excess of what is needed for highway purposes.*

Excess lands are acquired in fee either through direct purchase or eminent domain proceedings pursuant to the above policy. The procedure for acquisition is similar to acquisition of other lands needed for trunk highway purposes. A separate description and separate acquisition instruments are drafted for the excess acquisition.

**127.2 PROCEDURE****District Land Management/Right of Way Engineer**

1. Receives written request from the owner or owners for excess land acquisition. Prepares acknowledgment of receipt of letter to be signed by Director, Office of Land Management.
2. Recommends approval or disapproval and forwards same to the Director, Office of Land Management for concurrence.

**Director, Office of Land Management**

3. Reviews recommendation of District Engineer and if determined to be in the best interest of the State, forwards to pre-acquisition supervisor for preparation and circulation of a staff authorization map, as set forth in 5-491.108.

**127.3 EXCESS ACQUISITION APPROVAL/DISAPPROVAL****District Land Management/Right of Way Engineer**

Either advises owner that his request for excess acquisition has been approved and that offer in direct purchase will be made at the time of offer for regular right of way parcel. (Balance of procedure same as for right of way acquisition.)

or:

Advises owner(s) by letter that the request for excess land acquisition has been denied.

**PRE-ACQUISITION (5-491.100)**  
**TURNBACKS (5-491.128)**

**128.1 POLICY**

- A. It is the policy of the Department of Transportation to remove from the trunk highway system those lands, with roadways constructed thereon, which are no longer required as a part of the trunk highway system. This includes jurisdictional alignments and all frontage roads, except in cases where the state wishes to retain control.
- B. Prior to the relinquishment or abandonment of any existing trunk highway right of way, full consideration will be given through design and needs study as to any possible present or future appropriate public uses for purposes such as rest areas, scenic enhancement, recreational facilities, or parks.
- C. When changes in any road or street are required and/or caused by the construction or reconstruction of a trunk highway the Commissioner of Transportation may release that portion of any relocated road or street to the road authority having jurisdiction over the maintenance thereof.
- D. Access will be controlled between the trunk highway and the roadways being released. Generally, all existing access control will be retained or perpetuated. When the access controlled highway is constructed and access is acquired along side roads at intersections, the right of way having access control should remain in the trunk highway system.
- E. The Code of Federal Regulations 23 CFR Part 620, Subpart B, discusses the relinquishment and abandonment of right of way on which there has been a federal-aid highway project. If all features of the highway system being replaced and the one being established were reviewed at the time of the approval of plans, specifications and estimates, and concurred in by the federal agency prior to the start of construction, it will not be necessary for FHWA to review the turnback subsequent to plans, specifications & estimates (PS&E) approval.
- F. A Notice of Release or Transfer will be issued by the Office of Land Management when the roadway to be reverted is no longer included within the trunk highway system as defined by a Commissioner's Order.
- G. Whenever lands were acquired by means other than by the Commissioners Orders, the Commissioner may convey the land by quitclaim deed to another road authority.
- H. It shall be the District/Division Engineer responsibility to schedule all trunk highway reversions within the limitation of the following provisions:
  - 1. District/Division Engineer's assumes accountability for planning, negotiation, and implementation of jurisdictional alignment projects.
  - 2. District/Division Engineer's shall address jurisdictional alignment planning in long range plans to become eligible for turnback funds.
  - 3. Districts/Division Engineer's scope "traditional" turnback concurrently with any new major construction project, and establish total project funding before construction of new route.

4. Districts/Division Engineer's should require written documentation on the conditions that need to be met by all parties prior to a final release date.
  5. Consider all sources of funding when developing a funding scenario for a jurisdictional alignment.
  6. The road authority from whom the roadway was originally acquired shall be determined with the assistance of the Office of Land Management, Legal & Real Estate Conveyance Unit.
  7. The eligibility for a route to be designated as either a County State-Aid highway or a Municipal State Aid street shall be mutually determined by the District Engineer and the State Aid Engineer.
  8. A meeting will be held with the local road authority to discuss eligibility for State Aid, availability of turnback funds, and corrective measures which may have to be applied before the effective date of turnback.
  9. It shall be the policy of Mn/DOT to submit preliminary notice to the local jurisdiction at least six months before the tentative reversion date informing them of the Department's intent and eligibility for State Aid and turnback funds. Copies of said notice must be sent to Office of State Aid and the Central Office of Land Management.
  10. Sixty days prior to the date of reversion, the district engineer shall notify the local jurisdiction of the forthcoming release. A copy of said notice must be sent to the office of State Aid and the Central Office of Land Management.
- I. When a trunk highway, to be routed over an interstate highway, is released between November 1 and May 30, Mn/DOT shall maintain the old trunk highway until the next October 30.
- When a trunk highway, to be routed over an interstate highway, is released between June 1 and October 30, Mn/DOT shall maintain the old trunk highway until the next May 30.
- The local road authority may waive, by resolution, the aforementioned maintenance periods. No resolution is needed if that timing is part of a negotiated agreement.
- J. When a trunk highway is to be realigned or routed over another trunk highway, it shall be the policy of Mn/DOT, consistent with law, to revert the old trunk highway to the local authority between April 1 and November 1. This also applies to all other reverted roads i.e.; frontage roads, etc.
- The local road authority may waive, by resolution the aforementioned time period. No resolution is needed if that timing is part of a negotiated agreement.
- K. District Plan Steering Committee (Members: representatives of the Transportation Research & Investment Management, Engineering Services, Operations, State-Aid, Metro Division, and the Deputy Commissioners) will evaluate the District/Division Jurisdictional Alignment plan and make recommendations regarding strategies and priorities.
- L. District/Division will track jurisdictional alignment projects using artemis schedules.

- M. The Office of Land Management will manage the internal process and track in the ROWIS database.
- N. The State-Aid Division will develop a programming process and an annual priority list of backlog jurisdiction alignment projects based on the criteria suggested by the Trunk Highway Turnback Advisory Group. The State-Aid Division will also develop an annual status report of jurisdictional alignment projects. The report should identify new projects, projects funded within the previous years, and projects still on the waiting list.
- O. The Office of Technical Support - Cultural Resource Unit will provide support, such as identifying known cultural and historic resources as requested by the Districts/Division as regards to all jurisdictional alignments and/or turnbacks.

NOTE: See Flow Charts # 1 through 5 for Turnback/Jurisdictional Realignment Process "Flow Charts" for overview.

## 128.2 STATUTE AUTHORITIES AND REQUIREMENTS

All turnbacks (release, reversion or conveyance) shall be in accordance with Minnesota Statutes as follows:

### **161.16 TEMPORARY AND DEFINITELY LOCATED TRUNK HIGHWAYS; VACATION AND REVERSION.**

**Subdivision 1. Temporary Trunk Highways; Reversion.** Until such time as the commissioner definitely locates and constructs the several routes of the trunk highway system, the Commissioner shall select practicable existing roads along the general location of such routes and shall maintain for the benefit of the traveling public. Such roads shall be known as temporary trunk highways. The road authority which had jurisdiction over such road shall, thereupon, be relieved of responsibilities thereto; provided, however, if the definite location of the route shall be other than the location of the temporary trunk highway, the portion of the temporary locations which is not included in the definite location shall, upon notice of the commissioner, revert to the road authority unless the same lies within the corporate limits of a city, in which case it shall become a street of the city, provided that when the portion of the temporary location, which is not included in the definite location lies within a city having a population of less than 5,000, that portion shall revert to the county if it meets the criteria for a county state-aid highway.

**Subd. 2. Designation and location by order.** The commissioner shall by order or orders designate such temporary trunk highways, and on determining the definite location of any trunk highway or portion thereof, the same shall also be designated by order or orders. The definite location of such highway or portion thereof may be in the form of a map or plat showing the lands and interests in lands required for trunk highway purposes. Formal determination or order if by map or plat, shall be certified by the Commissioner of Transportation on said map or plat. The commissioner may, by similar order or orders, change the definite location of any trunk highway between the fixed termini, as fixed by law, when such changes are necessary in the interest of safety and convenient public travel. The commissioner shall file certified copies of such orders with the county auditor of the county wherein such highways are located. Such certified copies shall become permanent records and shall not be removed from the office or offices wherein filed.

**Subd. 3. Public hearing.** When the county board of any county requests a public hearing in regard to the definite location or a change in the definite location of any trunk highway within its boundaries, the commissioner shall hold such hearing in such county before making his determination in such matters.

**Subd. 4 Reversion or conveyance to another road authority.**

- (a) If the commissioner makes a change in the definite location of a trunk highway as provided in this section, the portion of the existing road that is no longer a part of the trunk highway by reason of the change and all right, title, and interest of the state in the trunk highway shall revert to the road authority originally charged with the care of that trunk highway unless the commissioner, the road authority originally charged with the care of the trunk highway and the road authority of the political subdivision in which the portion is located agree on another disposition, in which case the reversion is as provided in the agreement. When the reversion is to a county and a portion lies partly within a city of under 5,000 population the entire portion shall revert to the county if it meets the criteria for a county state-aid highway.
- (b) If the portion had its origin as a trunk highway, it shall become a county highway unless it lies within the corporate limits of a city, in which case it shall become a street of the city. When the existing road that is no longer a part of the trunk highway by reason of the change lies within a city of less than 5,000 population, the portion shall revert to the county if the portion meets the criteria for a county state-aid highway. In municipalities of over 5,000 population that portion of the road may revert to the county if the appropriate authorities of the state, county and the various cities through which the route passes so agree. Should any city not agree that the portion of the roadway that passes through it shall revert to county jurisdiction, the portion shall not so revert, although the other portions of the roadway in which agreement has been reached shall revert to county jurisdiction. Notwithstanding the other provisions of this chapter or other applicable laws and rules, the commissioner may convey and quitclaim to a county, city or other political subdivision all or part of the right of way of the existing road that is no longer a part of the trunk highway by reason of the commissioner's order or orders. The conveyance shall be for highway purposes, and the future cost of maintenance, improvement, or reconstruction of the highway and contribution of that highway to the public highway system is reasonable and proper consideration for the conveyance. This subdivision shall apply to all trunk highways reverted before May 29, 1967.

**Subd. 5. Damages due to vacation of road having origin as a trunk highway.** Damages occasioned by the vacation of any highway or street that had its origin as a trunk highway, if vacated by the county within one year after the commissioner relinquished jurisdiction thereof, shall be paid by the state out of the trunk highway fund. No award of damages determined by the county shall be made for such vacation without the concurrence of the attorney general, and no action brought to recover damages for such vacation shall be settled or otherwise disposed of without the consent of the attorney general. The attorney general may defend any action brought to recover damages for such vacation.

**Subd. 6. Vacation.** When the definite location of any trunk highway takes the place of and serves the same purpose as any portion of an existing road, however established, the commissioner may make an order vacating such portion of the road. A copy of the order shall be served upon the owners and occupants of the lands on which is located the portion of the road so vacated and, if the road terminates at or abuts upon any public water, a copy of the order also shall be served upon the commissioner of natural resources. The notice under this subdivision is for notification purposes only and does not create a right of intervention by the commissioner of natural resources. A copy of the order, together with proof of service, or affidavit of publication if the owners are unknown or reside outside the state, shall be filed with the county auditor of the county in which such lands lie. Any person claiming to be damaged by the vacation may appeal at any time within 30 days after the service of the order to the district court of the county for a determination of damages, by serving notice of the appeal on the commissioner and filing same with proof of service in the office of the court administrator of the district court. The appeal shall be tried in the same manner as an appeal from an award in proceedings in eminent domain.

**161.161 HIGHWAY ON COUNTY LINE, REVERSION.**

Where a trunk highway which is being reverted to a lower governmental subdivision is on or forms the line between two or more counties, the trunk highway shall revert to and remain the responsibility of the affected counties.

**161.24 CHANGES REQUIRED BY CONSTRUCTION OF TRUNK HIGHWAY.**

**Subd. 1 Grade at intersections.** When the construction or reconstruction of a Trunk Highway results in a change of grade which necessitates a change of grade in intersecting or connecting highways or streets, including city streets, the cost of making the grade changes and any damages occasioned thereby shall be paid out of the trunk highway fund.

**Subd. 2. Relocation of highway.** When in the judgment of the commissioner, the establishment, construction, or reconstruction of a trunk highway requires, in the interest of safety or convenient public travel, a change in the location of any highway or street, including a city street, the commissioner may make the needed change in location after obtaining the approval of the road authority having jurisdiction over such highway or street. The cost of the change in location and any damages occasioned thereby shall be paid out of the trunk highway fund. All lands necessary therefore may be acquired by purchase, gift or condemnation. The highway or street as changed shall be the legally designated location thereof until otherwise changed as provided by law, and the maintenance and care of the highway or street shall be the responsibility of the road authority having jurisdiction thereof.

**Subd. 3. Detours during construction.** On determining, during construction, reconstruction, or maintenance of a trunk highway, that it is impractical to provide crossovers within the trunk highway limits for local highways or city streets designated for and carrying traffic of five tons or more per axle, and that it is necessary to provide a detour outside the limits of the trunk highway for traffic using such local highways or streets to meet local traffic needs, the commissioner may, upon request of the local road authority, expend trunk highway funds on the most practical detour to the extent necessary to provide a route reasonably adequate to carry such detour traffic. The commissioner may provide temporary traffic control devices on such detours as the commissioner deems necessary.

**Subd. 4. Access to isolated property.** When the establishment, construction, or reconstruction of a trunk highway closes off any other highway or street, including city streets, private road, or entrance at the boundary of such trunk highway the commissioner may, in mitigation of damages, or in the interest of safety and convenient public travel, construct a road either within the limits of the trunk highway, or without the limits of the trunk highway, connecting the closed off highway, street, private road, or entrance with another public highway. In determining whether to build the road within or without the limits of the trunk highway, the commissioner may take into consideration economy to the state and local traffic needs. The commissioner, in mitigation of damages, may connect the closed off private road with the remaining portion of the private road or with another private road. All lands necessary therefore may be acquired by purchase, gift, or condemnation.

**Subd. 5. Maintenance of roads outside trunk highway.** Any road so constructed outside the limits of the trunk highway shall be maintained by the road authority having jurisdiction over the highway or street closed off. Any private road constructed outside the limits of the trunk highway connecting the private road with a public highway shall be the responsibility of the property owners or owners served thereby.

**Subd. 6. Agreements.** The commissioner and the road authority affected may enter into agreements upon such terms as may be agreed upon, to provide for the construction of such grade changes, changes in location, detours, or connecting roads.

**161.082 County Turnback Account Expenditure**

**161.083 Municipal Turnback Account Expenditure****128.3 PROCEDURE****District/Metro Division**

1. Determine the state project trunk highway number, designation, constitutional or legislative route number designation, Control Section #, the "900" section location and the termini of the trunk highway which the State proposes to convey. District/Division will track jurisdictional alignment projects using Artemis schedules.
2. Determine the entity from which the roadway was originally acquired by the state and to what governmental jurisdiction (county, city, or other political subdivision) the right of way of the existing trunk highway will revert. For assistance in obtaining this information, contact the Office of Land Management.
3. Notify the OIM (Office of Investment Management) regarding proposed changes in legislative and constitutional routes.
4. Determines if the portion of trunk highway to be turned back is eligible for State Aid designation and funds participation.
5. Determine if the release involves any lands included in a reconveyance in process. A release cannot be executed if any of the lands are to be reconveyed.
6. Prepare Turnback Authorization Map.
  - a. Prepare Form 25317 (Staff Signature Sheet).
  - b. Prepare Form 30204 (Recommendation to Release).
  - c. The proposed right of way line and restricted access must be shown in red color.
  - d. Released portions to be shown colored yellow.
  - e. Prepare index map showing rerouting.
  - f. Circulates authorization map throughout District for signatures (includes routing through the District Surveys Office).
7. Receive Office of Investment Management approved rerouting.
8. SIX MONTHS PRIOR TO RELEASE DATE
  - a. Give preliminary notice to local road authority. Copies of the notice must be sent to the Offices of State Aid and of Land Management.
  - b. Submit the Turnback Authorization Map (with Forms 25317 and 30204 attached) to Director, Office of Land Management.
9. SIXTY DAYS PRIOR TO RELEASE DATE, notify local road authority of forthcoming release. Copies of said notice MUST be sent to the State Aid and Office of Land Management.

**Director, Office of Land Management**

10. Receive turnback authorization map from District and assign to Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

11. Record date of receipt of authorization map records. Checks for pending reconveyance. Check for pending litigation. Circulate Authorization Map for central office staff signatures and when completed, record date authorized. Forward Authorization Map to Legal Description and Commissioners Orders Unit for preparation of orders.

**Legal Description and Commissioners Orders Unit**

12. Receive Turnback Authorization Map, determine which orders must be prepared and prepare appropriate orders. Return Authorization Map to the Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

13. Receive Authorization Map. Prepare for the Director of Office of Land Management signature, a Letter of Release transmitting "Notice of Release of Trunk Highway" to appropriate road authority.
14. Complete Notice of Release and obtain signature of Commissioner of Transportation.
15. Receive signed Notice of Release and Letter of Release (signed by Director, Office of Land Management) from the Commissioner and send certified copies of same to the appropriate road authority by certified mail. Update records and forward authorization map to the Mapping Unit.

**Mapping Unit**

16. Prepare R/W map in the following manner:
  - a. Released portions of right of way will be depicted with a turnback symbol (neutral tint or --TB--).
  - b. A caption will be placed at or near the front of the map for each Release and will contain the effective date of reversion and the road authority involved.
  - c. When a portion of the released trunk highways shows on more than one file map, it should be cross-referenced with the other file maps.

**128.4 ACTION FOR CONVEYANCE BY COMMISSIONER' S DEED****Legal and Real Estate Conveyance Unit**

1. Forward authorization map to the Legal Description and Commissioner's Orders Unit for preparation of descriptions for quitclaim deed and updates records.

**Legal Description and Commissioner's Orders Unit**

2. Receive Authorization Map.
3. Prepare descriptions for quitclaim deed and forward data to the Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

4. Receive the descriptions and 1 print showing the portion to be conveyed, colored in yellow, for conveyance of right of way, and update records.

The quitclaim deed is prepared in quadruplet along with a cover letter to the appropriate road authority. Also a file folder is made up (in pencil) showing the release number on the outside of the folder.

5. Send the deeds and map to the Director of the Office of Land Management for execution.
6. Verify proper execution, the dating of the documents and the imprint of the seal. Obtain approval as to form and execution by Assistant Attorney General.

**Legal and Real Estate Conveyance Unit**

7. The original quitclaim deed, map, turnback recording data form and Transmittal Letter are sent to the road authority via certified mail. Copies of the transmittal letter are sent to the District Engineer and District Right of Way Engineer.
8. Upon return of the certified mail receipt, attach it to the turnback folder, forward it to the Mapping Unit.

**Mapping Unit**

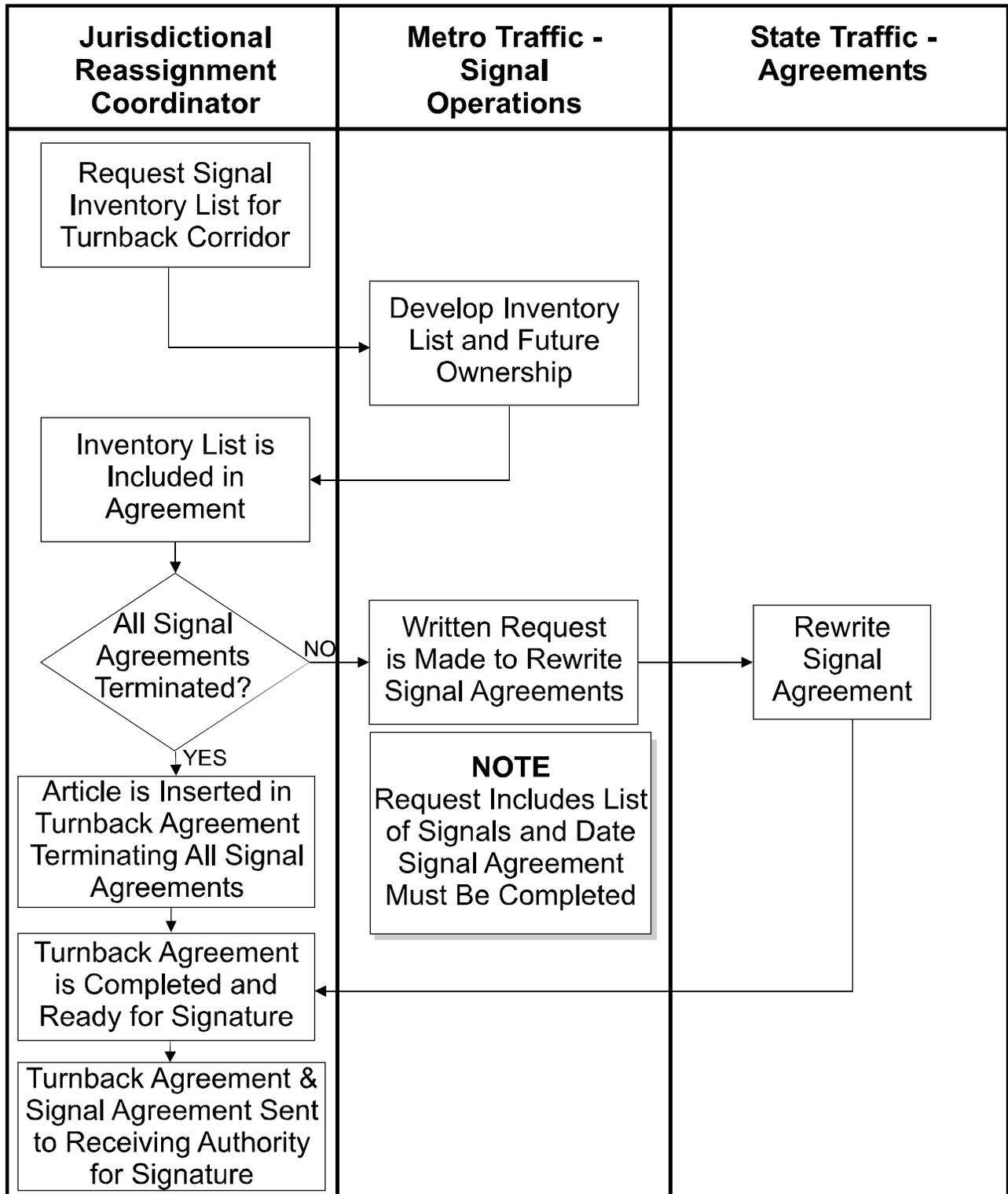
9. As turnback quitclaim deeds are issued, the date of the deed, the road authority the deed is issued to, and the parcels involved in the deed that are shown on the map will be added to the caption. An updated map is to be sent to the District R/W Engineer with a copy of the quitclaim deed. Return file to the Turnback Technician in the Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

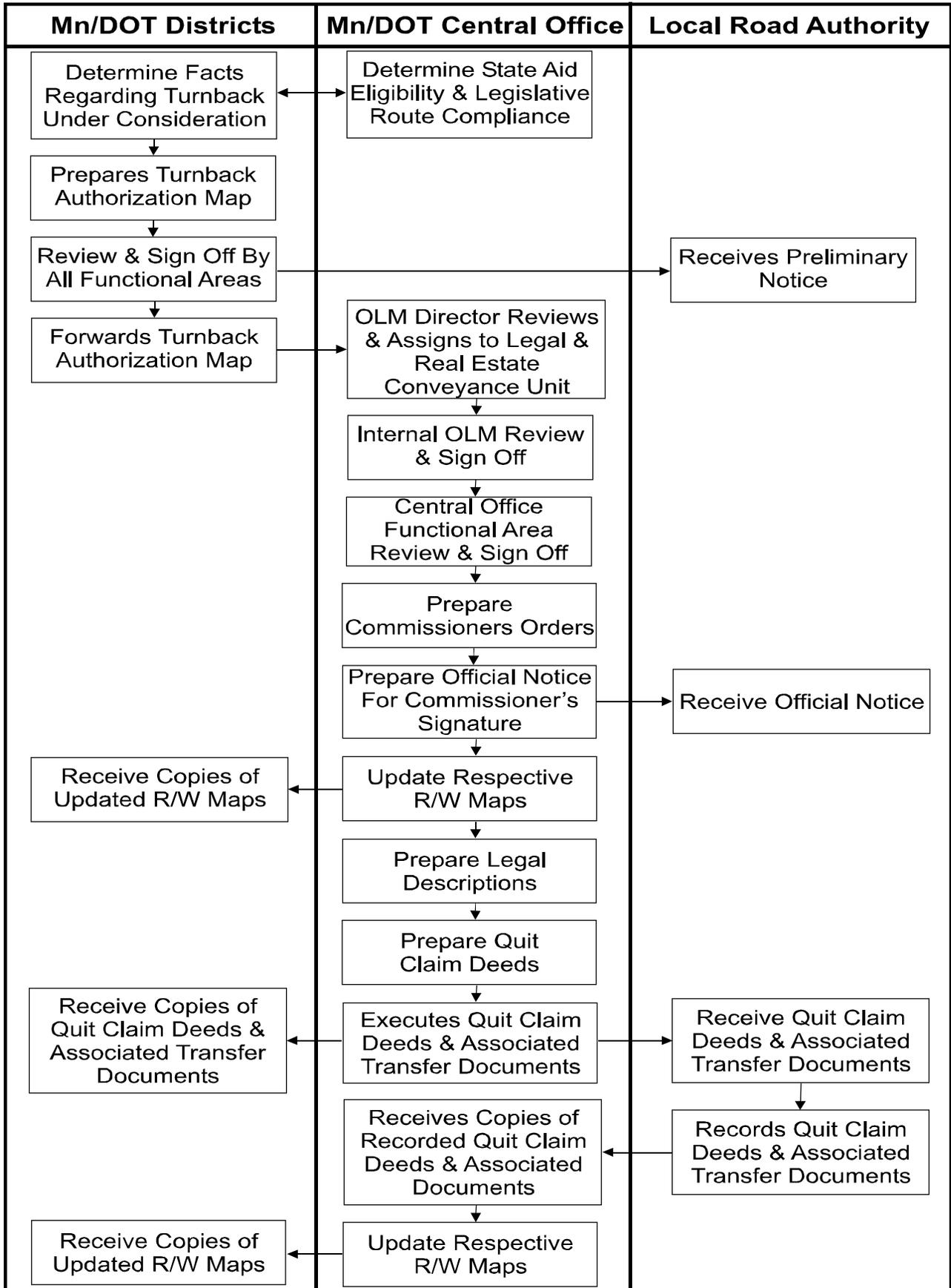
10. Place all data (Authorization Map and a copy of the quitclaim deed) in the turnback file and update records. Send a dated copy of the deed to the State Finance Office.
11. On projects where there are total parcels being deeded, the parcel files will be sent to the District R/W Engineer to be delivered to the appropriate road authority, or mailed directly to the road authority. The Condemnation folders shall remain with Mn/DOT.



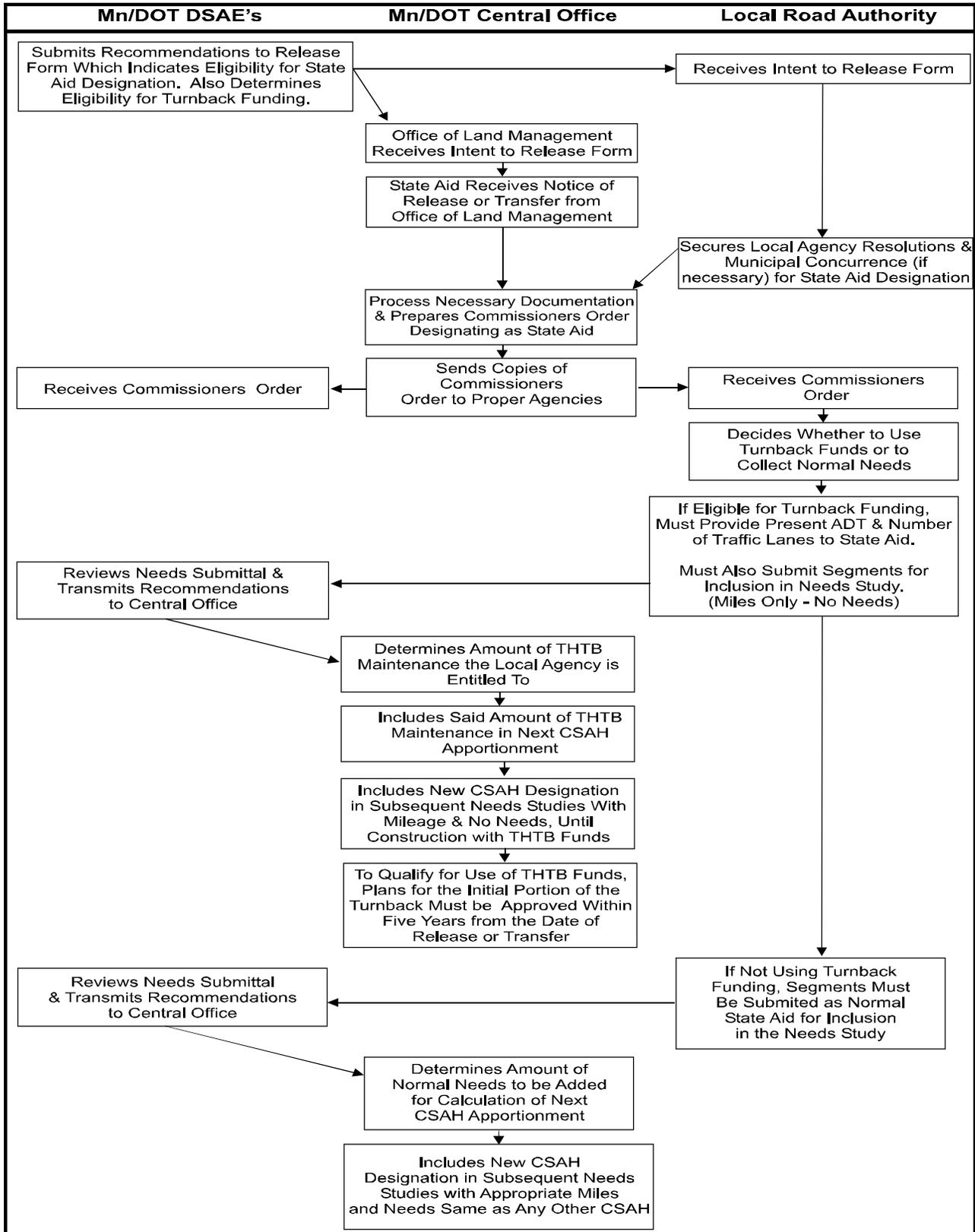
## Activity Process Flow Chart #2 for Rewriting Signal Agreements



### Activity Process Flow Chart #3 Office of Land Management Turnback Process



## Activity Process Flow Chart #4 State Aid Turnback Process



**NOTE:**

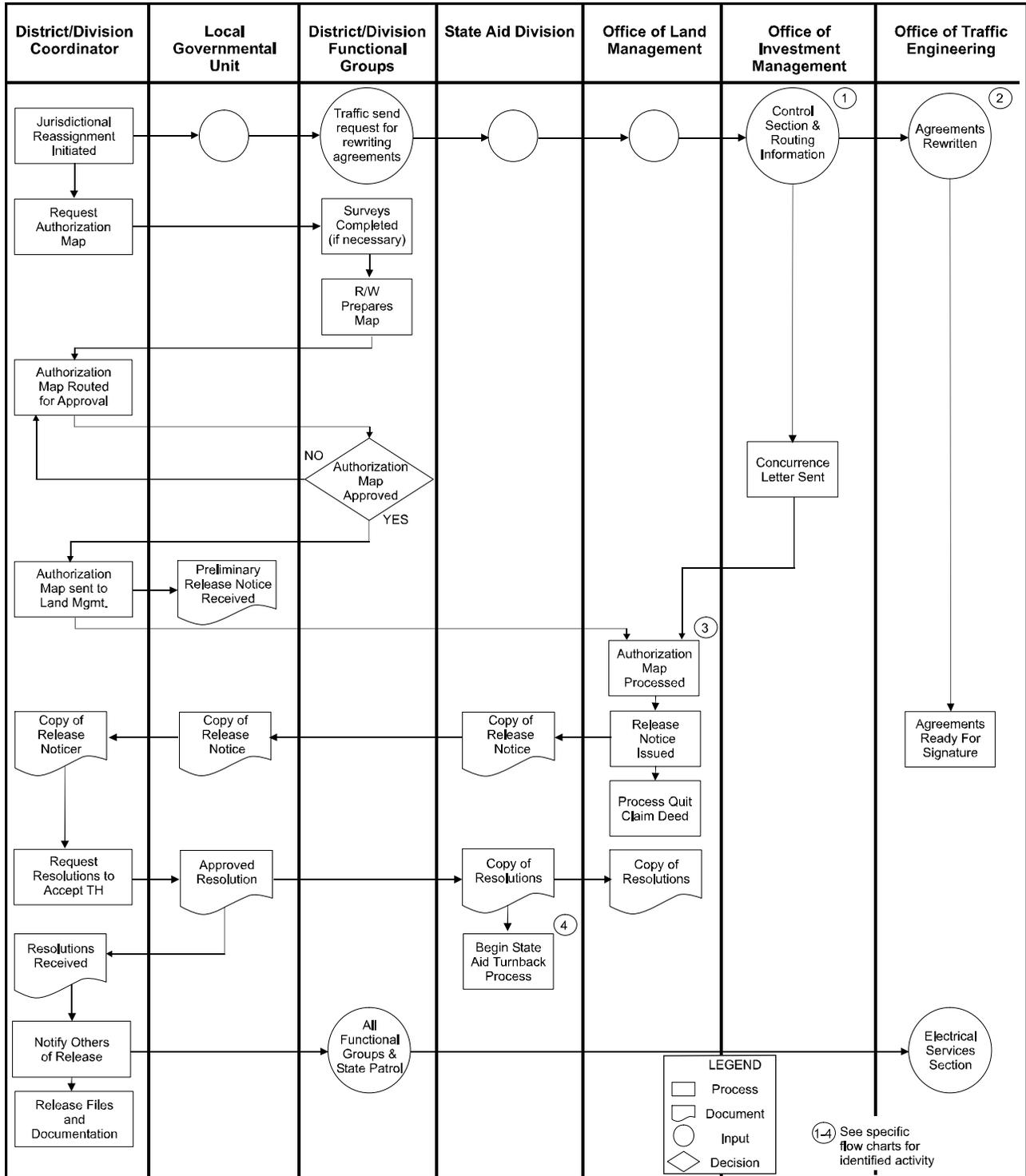
From this point on, all plan submittal, project approval, documentation, processing, etc. - generally follows normal State Aid policy and procedures

Also, Commissioners orders designating State Aid routes are submitted to the following:

- |                                 |                                       |
|---------------------------------|---------------------------------------|
| 1) District State Aid Engineer  | 5) Mn/DOT - Cartographic Unit         |
| 2) County or City Engineer      | 6) Mn/DOT - Trans. Data Analysis Unit |
| 3) County Auditor or City Clerk | 7) Mn/DOT - Traffic Forecasting Unit  |
| 4) State Aid Needs Unit         | 8) Mn/DOT - Bridge Data Unit          |

This is the ONLY official notification of State Aid System changes.

**JURISDICTIONAL ALIGNMENT INTERNAL PROCESS #5**  
**March 1998**



**PRE-ACQUISITION (5-491.100)  
VACATION OF ROADS (PETITION AND RELEASE) (5-491.129)**

**129.1 POLICY**

Mn/DOT may vacate roads in accordance with *MINN. STAT. §161.16 TEMPORARY AND DEFINITELY LOCATED TRUNK HIGHWAYS; VACATION AND REVERSION*. It is Mn/DOT policy that only roads taken over by Commissioners order and trunk highway monies were not spent on the right of way are eligible for vacating. If the right of way was purchased by Mn/DOT the correct policy procedure to use is set forth in Section 5-491-801, Reconveyance.

**A. Township and County Roads:**

When an existing township or county road is being replaced by the State with a trunk highway or connection to the highway and the highway or connection serves the same purpose as the old road, the State has the authority to vacate the replaced portion of the old road. A petition and release should be prepared and signed by the abutting owners affected. Also a temporary easement should be shown on the map covering the portion of the township or county road to be obliterated that is outside the right of way limits.

**B. Temporary Trunk Highways:**

If a temporary trunk highway located entirely outside the new right of way limits is to be vacated and obliterated, a petition and release should be prepared for signature by the abutting owners as above. A temporary easement as above will also be required.

**C. Commissioner's Vacation Order:**

A Commissioner's Vacation Order will be prepared pursuant to *Minn. Stat. §161.16, Subd. 6, Vacation: "When the definite location of any trunk highway takes the place of and serves the same purpose as any portion of an existing road, however established, the commissioner may make an order vacating such portion of the road. A copy of the order shall be served upon the owners and occupants of the lands on which is located the portion of the road so vacated and, if the road terminates at or abuts upon any public water, a copy of the order also shall be served upon the commissioner of natural resources. The notice under this subdivision is for notification purposes only and does not create a right of intervention by the commissioner of natural resources. A copy of the order, together with proof of service, or affidavit of publication if the owners are unknown or reside outside the state, shall be filed with the county auditor of the county in which such lands lie. Any person claiming to be damaged by the vacation may appeal at any time within 30 days after the service of the order to the district court of the county for a determination of damages, by serving notice of the appeal on the commissioner and filing same with proof of service in the office of the court administrator of the district court. The appeal shall be tried in the same manner as an appeal from an award in proceedings in eminent domain."*

**D. Agreement by Adjoining Owners:**

All adjoining owners in the area affected by proposed vacation, must be in agreement and sign the petition and release or the vacation procedure cannot be used. (Turnback procedure will be required - Sec.5-491.128).

**E. Title to Prospective Owner:**

When the Commissioner's order for vacation is filed with the County Auditor, title passes in accordance with state law.

**129.2 PROCEDURE****District/Metro**

1. On a print of the work map ("Master Map") show, in a different color, the portion of the old road right of way on each ownership affected. When there are different owners on each side of a roadway, show half of the roadway abutting each ownership. This map will be used by the field person contacting the owners.
2. Have three prints made of each parcel colored to correspond with the master map.
3. Complete Form 25113 (3-77), ("Petition and Release").
4. Assemble three parcel maps together with Petition and Release forms in blue backs.
5. Secure signature of owner and all interested parties on petition and release for each parcel, leaving one copy with the owner or his representative.
6. Show on work map and staff authorization map the portions of roadway to be vacated and proposed obliteration.
7. When submitting R/W package to central office for description writing, it should contain the original master map, signed petition and release with one copy for each parcel, as applicable.

**Legal Description and Commissioner's Order Unit**

8. On receipt of R/W package, master map, signed petition and release, and applicable copy's, prepares vacation order.
9. Returns the vacation order, master map, and copy of each petition and release to District Office.

**District/Metro**

10. A Real Estate Representative of the Department of Transportation serves the owner with a copy of the Commissioner's vacation order and completes Affidavit of Service, R/W Form 25450 (two per parcel).
11. If the road terminates at or abuts upon any public water, for notification purposes a copy of the order also shall be served upon the Commissioner of Natural Resources for notification purposes.
12. If it is not possible to find owner who signed petition and release, the vacation order must be posted. Two copies of order shall be posted, one in a conspicuous place on the property affected and one at a public building - town hall, city hall, or courthouse.
13. An Affidavit of Posting Form 25167 must be completed for each posting (two per parcel).
14. All signed affidavits, master map, and copy of each petition and release, are returned to the Commissioner's Order Unit of the Office of Land Management.

**Legal Description and Commissioner's Order Unit**

15. Sends one affidavit and certified copy of the vacation order to County Auditor by cover letter signed by the Director of the Office of Land Management.
  
16. Master map, petition and release, and an affidavit for each parcel are filed in the vacation order file on the project involved. A copy of the petition and release is placed in appropriate parcel file.

**PRE-ACQUISITION (5-491.100)**  
**MINERAL RIGHTS PROCEDURE (5-491.130)**

**130.1 POLICY**

In cases where the mineral rights and the surface rights interests are severed, the holders of mineral rights are to be made aware of the State's acquisition; and highway rights are to be maintained consistent with Minn. Stat. §160.10, which is as follows:

***MINN. STAT. §160.10 ROADS ON MINERAL LANDS.***

*Subdivision 1. Change of location; standards for relocated road. When any road, including any street within a city crosses mineral land and the road interferes with mining operations on the land, the owner or lessee of the land may notify the road authority of the interference and request that the road be relocated. The road authority shall, thereupon in the manner provided by law, relocate the road so as not to interfere with the mining operations. The relocated road shall be constructed to at least the engineering standards of the old road unless the road authority determines that such standards are not necessary for safety or for the convenience of public travel. All right-of-way needed for such relocation shall be provided by the owner or lessee of the land or shall be acquired by the road authority by gift, purchase, or other manner provided by law.*

**130.2 PROCEDURE**

Regular acquisition procedure is adhered to, except, that in cases where minerals are involved, the parties holding the mineral interest must be identified in the parcel, even though the mineral interest will not be acquired. Parcels in which the mineral interest have been severed may be acquired by means of direct purchase subject to mineral rights. No special approvals for such purchases are required. If circumstances, such as a total relocation of a highway, suggest special review, this will be done on a parcel by parcel basis.

**A. Tax Forfeited and Trust Fund Lands**

When tax forfeited lands or state trust fund lands are acquired, lands in these categories shall be identified as having severed mineral interests in the name of the State of Minnesota through the Department of Natural Resources. All lands under the custodial control of the Department of Natural Resources shall also be so identified. State trust fund lands must be acquired by means of eminent domain. The following Minnesota Statutes must be considered:

***MINN. STAT. §282.12 ALL MINERALS RESERVED.***

*Any sale of such forfeited lands shall be subject to exceptions and reservations in this state, in trust for the taxing districts of all minerals and mineral rights.*

***MINN. STAT. §282.225 MINERAL RIGHTS RESERVED.***

*Every certificate of sale and instrument of conveyance issued under sections 282.221 to 282.226 shall state that the sale or conveyance does not include any right, title, or interest in or to any iron, coal copper, gold or other valuable minerals which may be upon the land therein described, and that these minerals are reserved by the state for its own use; but no instrument shall be effective to transfer any right, title, or interest in or to any such minerals, notwithstanding the failure of the proper officer to insert this statement.*

**B. Eminent Domain.**

When acquiring parcels with severed mineral interest by means of eminent domain, the petition shall be qualified with a statement similar to the following:

It is the intention of this proceeding to except all mineral rights and reserve to the owners of the mineral rights, their heirs, successors and assigns, the rights and privileges to explore for, mine, and remove the minerals, but only in such manner that will not interfere with the use of said land for highway purposes or with the safe and continuous operation of any public highway thereon, and further the mineral owner reserves the right to relocate the highway at the mineral owner's expense, pursuant to Minn. Stat. §160.10, as such may be amended.

**PRE-ACQUISITION (5-491.100)**  
**MARKING BOUNDARIES OF HIGHWAYS**  
**MONUMENTATION PLATS (5-491.131)**

**131.1 POLICY**

In accordance with Minnesota Statutes, Section 160.14, the Minnesota Department of Transportation, as a road authority, is authorized to place and maintain suitable monuments to mark and indicate the boundaries (right of way limits) of highways under the Department's jurisdiction. Subdivisions 1 through 4 of the Statute recite the general provisions and requirements for monumentation plats.

**131.2 PROCEDURE****District Engineer, Survey Engineer, Land Management/R/W Engineer**

1. Make a determination of what highway right of way requires monumentation.
2. Submits the request for monumentation work authority, by specific control section termini, to the attention of the Assistant Director, Office of Land Management.

**District Land Management/Right of Way Engineer**

3. Upon approval of the work authority, obtains copies of the recorded acquisition documents contained in the parcel files.

**District Surveyor/Engineer**

4. Takes the appropriate steps to monument the right of way, as it is occupied, after referring to and evaluating the recorded documents of acquisition.
5. Submits the boundary data and all relevant documentation pertaining to the monumentation boundary points to the Platting Unit of the Office of Land Management, so the monumentation plats can be completed on the CADD System.

**Central Office Land Management**

6. The Platting Unit informs the Project Coordination and Finance Unit that a monumentation plat is being prepared. Project Coordination submits a preliminary plat and a work assignment memo to the Description Unit for review and necessary revision. The completed preliminary monumentation, the recorded documents referred to in step 4, and copies of any subdivision plats abutting the right of way that have been filed subsequent to the acquisition of the right of way are then returned to the Project Coordination and are subsequently reviewed by the Platting Unit. After any necessary changes are resolved the plats can be finalized and circulated for signing.

**Land Management/Right of Way Engineer**

7. Assigns a field title check to determine the fee title owner, a contract for deed purchaser, occupants of the property, the description of the property as carried on the tax records, a certificate number if Torrens property and ownerships spotted on a copy of the current right of way map.
8. Has the monumentation plat be filed for record in the Office of the County Recorder and/or the Registrar of Titles. A certified copy of the monumentation plat and a certified copy of the plat order must be sent to the County Auditor, as the Commissioner's order.

9. Submits the following data to the Project Coordination and Finance Unit, Office of Land Management:
  - (a) The monumentation plat with the recording number and date.
  - (b) The Field Title Check Data.
  - (c) A copy of the most current right of way map, spotting ownerships.

**Project Coordination and Finance**

10. Forwards information received from the District to the Legal and Real Estate Conveyance Unit and Mapping Unit, Central Office.

**Legal and Real Estate Conveyance Unit**

11. The "Notice of Highway Monumentation" is prepared by the Legal and Real Estate Conveyance Unit, Land Management and sent by certified mail to the parties designated in step #7 above.
  - (a) On the front of Notice of Highway Monumentation, the telephone number designated is the current listing for the Project Coordination and Finance Unit.
  - (b) The Affidavit of Service shall be filled in the Notice of Highway Monumentation parcel file in the State of Minnesota Records Center.

**Mapping Unit**

12. The final right of way map, which is on the file in the Central Office of the Department of Transportation, shall have the location of the plat monuments and the plat number shown.

**PRE-ACQUISITION (5-491.100)**  
**WETLANDS AND WETLAND CREDITS ACQUISITION (5-491.132)**

### **132.1 BACKGROUND**

The Minnesota Legislature adopted the Wetland Conservation Act (WCA) of 1991 to achieve no net loss in the quantity, quality, and biological diversity of Minnesota wetlands. The spirit and intent of this act is well summarized in M.S. §103G.222 as follows:

- (b) Replacement must be guided by the following principles in descending order of priority:
  - (1) Avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;
  - (2) Minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;
  - (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;
  - (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity;
  - (5) Compensating for the impact by restoring a wetland; and
  - (6) Compensating for the impact by replacing or providing substitute wetland resources or environments.

All wetlands in Minnesota (with the exception of those regulated by the DNR) fall under the authority of the WCA. Regulated wetlands may not be filled or drained unless replaced by restoring or creating wetland areas of at least equal public value. Certain types of activities are exempted under the WCA and do not require the processing of paperwork or replacement. The two forms of replacement are project-specific and banking. Project-specific replacement involves securing fee title or easement for a parcel and then restoring a wetland or creating a wetland on that parcel in conjunction with an activity that fills or drains wetland. Banking involves purchasing credits from a landowner who has restored or created a wetland on his/her property, and has received approval from a Technical Evaluation Panel, and has deposited the credits in the Board of Water and Soil Resources administered state wetland bank. If wetland bank credits are purchased for future use, they must be transferred from the bank owner's account to the purchaser's account, with the following requirement: "Wetland banking credits may be transferred to another account holder providing the fee title or easement is transferred also, and providing all the remaining wetland banking credit for a wetland remains in one account." Chapter 8420.0720 Subpart 7. No such requirement is in effect for the purchase of credits for immediate use.

### **132.2 POLICY**

Mn/DOT shall conduct its wetland replacement activities in conformance with Minn. Stat. Chapter 103G and Minn. Rules Chapter 8420.

In all cases, once a determination of need or planned future need for wetland mitigation has been made by a District/Division, contact with the Office of Environmental Services must be made. The Office of Environmental Services shall review the stated need or planned future need and insure that districts/divisions do not identify and compete for the same wetland credits, easements or fee purchase in any "packages" submitted to the Project Coordinator and Finance Unit of the Office of Land Management. The Office of Environmental Services shall also consult with and include the Office of Land Management on any contemplated transactions with respect to obtaining wetland mitigation credits.

The Office of Environmental Services shall be the responsible party for maintenance of the Department's wetland credit bank, distribution of Mn/DOT owned credits and shall be the chief liaison with the Board of Soil and Water Resources for Mn/DOT's Districts/Divisions.

Mn/DOT has three options available for the acquisition of wetland credits. Below is a listing of these options and recommendations regarding when and how they may be appropriately used.

**A. The purchase of wetland credits only:**

Use of this option minimizes the amount of Mn/DOT's work, time, liabilities and in some cases expense to replace wetlands. Therefore, if wetland bank credits are available for an area where they are needed and can be purchased at a justifiable price then this is the preferred/recommended method of wetland mitigation for Mn/DOT.

**Note:** This method can only be used when credits can be applied to a particular project, one cannot under current law and rules purchase credits alone for unspecified future uses.

**B. Acquisition of fee or an easement over the entire wetland with bank credits and the purchase of all those available credits for Mn/DOT control:**

This method is used if credits cannot be obtained. This method has the disadvantage of Mn/DOT being the responsible party to maintain the wetland as wet, safe and free of weeds, litter, etc. Access to the wetland for such purposes must also be considered in the process.

**Note:** It is highly preferable to obtain fee or easement areas with 100% of the credits available if at all possible. This is intended to maximize the cost benefit ratio with regard to maintenance responsibilities and associated costs per credit acquired.

**C. Acquisition of fee or an easement over an area to be developed later as wetland to obtain wetland banking credits.**

Use of this option is recommended when credits are not available. Fee acquisition is preferred.

### 132.3 PROCEDURE

#### **District Hydraulic Engineer/Office of Environmental Services**

1. A determination of need is established.
2. Preliminary work is done to locate and identify a replacement wetland site or available wetland credits.
3. District R/W Engineer is requested to do a preliminary title investigation and estimate wetland acquisition cost.

#### **District Land Management/Right of Way Engineer**

4. Orders title certificate and field title investigation.

#### **District Hydraulic Engineer/Office of Environmental Services**

5. Technical approval is received and the site determined to be a viable project.
6. Project memo is started and the required surveys are ordered.

7. Request made to District R/W Engineer to prepare and process a R/W package to Central Office of Land Management.

#### **District Land Management/Right of Way Engineer**

8. Obtains survey data, prepares basic wetland R/W map, prepares wetland authorization map with accompanying letters to describe the nature of the acquisition. (Approvals obtained from District Engineer, Hydraulic Engineer, District R/W Engineer, District Area Maintenance Engineer, Office of Environmental Services, C.O. Director Office of Land Management). Submits R/W package with basic wetland map, authorization map, titles, field title reports and miscellaneous data to Office of Land Management.

#### **Project Coordination and Finance Unit**

9. Receives the R/W package from the District R/W Engineer and processes through the Office of Land Management for the following work/documents:
  - ! Circulates authorization for approval
  - ! Requests description to be written to describe the taking
  - ! Requests Commissioner orders be prepared
  - ! Request appraisal be completed
  - ! Requests funding
  - ! Requests preparation of the appropriate legal instruments by Legal and Real Estate Conveyance Unit.
10. Upon completion of the above item's the wetland parcel is submitted to Direct Purchase Unit for acquisition.

#### **Direct Purchase Unit**

11. Negotiates the proposed purchase of the "Wetland Credit"/"Wetland Easement"/"Fee Acquisition" of the wetland with the property owner or broker.
12. Obtain the recording of executed instruments by the Legal and Real Estate Conveyance Unit.
13. Processes the parcel for payment.
14. Advises Office of Land Management, District R/W, and Office of Environmental Services of completed acquisition.

#### **Office of Environmental Services**

15. Distributes wetland credits to the respective Districts as needed.

**PRE-ACQUISITION (5-491.100)**  
**MN/DOT LOCAL PUBLIC AGENCY ASSISTANCE AND MONITORING**  
**OF RIGHT OF WAY ACQUISITION (5-491-133)**

### 133.1 POLICY

In accordance with 23 CFR Section 710.201 (b) the State Highway Department (SHD) is to inform political subdivisions of applicable right of way acquisition requirements and to monitor their right of way acquisition activities. This regulation states:

(b) *Program oversight.* The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

#### A. ACQUISITION REQUIREMENT GUIDANCE

The following publications provide written guidance on acquisition requirements:

- ! **State Aid Manual Section 5-892.300 Right of Way** — This contains the basic 49 CFR Part 24 acquisition requirements. It, together with the included forms, is all that is needed for most non-complex right of way projects.
- ! **Real Estate Acquisition Guide for Local Public Agencies** — Developed by the Federal Highway Administration. A good reference guide on right of way acquisition.
- ! **Right of Way Project Development Guide** — Developed by the Federal Highway Administration. A good guide for all right of way activities.
- ! **Right of Way Manual 5-491.000** — Developed by the Office of Land Management. This manual contains detailed information on the acquisition process as performed by the Department of Transportation.

### 133.2 PROCESS

A. **ENVIRONMENTAL APPROVAL (Federal-aid)** — When environmental action is completed, the Central Office State Aid Division will provide the District Right of Way Engineer with a copy of the approval letter authorizing cities or counties to begin right of way acquisition.

#### B. DISTRICT GUIDANCE TO CITIES/COUNTIES

! **Before Acquisition.** Upon notification of the completion of environmental action, the District Right of Way Engineer should contact the City/County to discuss right of way acquisition on the upcoming project. Cities/Counties involved in ongoing acquisition may require no guidance. Those having infrequent projects or those with new right of way employees may require considerable guidance. Discussions may include:

- \* Does City/County have needed written guidance
- \* Are City/County staff experienced
- \* When acquisition can begin
- \* Who can be the appraiser
- \* Required appraisal format

- \* Use of the minimum damage acquisition
- \* Need for a review appraiser
- \* Who can be the reviewer
- \* Forms to use
- \* Relocation
- \* Check sheet (if used) to submit with the right of way certificate

! **During Acquisition.** On some projects, it may be good to visit City/County staff during acquisition. City/County staff should feel free to contact District R/W Engineers or Central Office Local Government R/W Coordinator for advice.

### C. RESPONSIBILITIES

**Central Office Local Government R/W Coordinator** - Provide overall guidance and direction to the program. Responsibilities include:

- \* Develop/Approve training courses
- \* Train new Mn/DOT District R/W Engineers on City/County monitoring responsibilities
- \* Keep written guidance current
- \* Distribute written guidance
- \* Provide policy/procedure clarifications/answers
- \* Participate in reviews of R/W acquisition on selected City/County projects

**District R/W Engineer** - Directly responsible for insuring that City/County acquisition meets requirements. Responsibilities include:

- \* Proactively establish working relationships with City/County R/W acquisition personnel
- \* Provide advice to City/County staff
- \* Review City/County work
- \* Sign off on City/County right of way certificates

### 133.3 RIGHT OF WAY CERTIFICATES

Upon receipt from the City/County, District Right of Way Engineers must sign off on right of way certificates. Before doing so, they must be satisfied that acquisition requirements have been met. This can be accomplished in different ways, depending on City/County expertise and on previous District involvement. Following are some suggested methods for review practices:

- \* Phone conversation — discuss acquisition with City/County staff
- \* Visit City/County — make a field review of files and the project
- \* Submission of selected files — make office review of submitted files

NOTE: See a sample of a suggested "check sheet" which can be requested from the City/County along with the Right of Way Certificate on the following page.

**SAMPLE "CHECK SHEET"**

S.P. \_\_\_\_\_

County/City \_\_\_\_\_

MN Project \_\_\_\_\_

Letting Date \_\_\_\_\_

In submitting the attached Right of Way Certificate, I am certifying that the right of way required for this project was acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 49 Code of Federal Regulations Part 24, Minnesota Statutes 117.51 and 117.52, and State Aid Manual (SAM) 5-892.300. I hereby certify that:

1. Owners were contacted prior to acquisition and advised of the project and the acquisition process.
2. Acquisition information (brochure) was provided to owners by mail or through public hearings.
3. Environmental action was completed prior to acquisition.
4. Appraisers were qualified.
5. Appraisers gave owners the opportunity to accompany them.
6. If used, the minimum damage acquisition (MDA) format was used only on parcels under \$5,000.
7. Appraisals were obtained on all parcels over \$5,000.
8. Appraisal reviews were performed on all parcels over \$5,000.
9. All values were approved by the City/County prior to offers being made.
10. Written offers were provided owners. They separated taking and damages.
11. On parcels over \$5,000, neither the appraiser nor the review appraiser served as the negotiator.
12. Owners were advised of appraisal fee reimbursement.
13. Offers were made to acquire uneconomic remnants.
14. Tenant-owned improvements, if any, were identified and valued independently.
15. Condemnation was not filed within 30 days of offers.
16. In condemnation, certified values were made available to owners.
17. Owners were paid, or money made available, prior to possession.
18. Relocation assistance, if required, was provided.
19. For donations, owners were advised of their entitlement to appraisal and payment as discussed in the SAM (State Aid Manual) 5-892.300C1.
20. Donations of property in lieu of construction improvements are documented as discussed in the SAM 5-892.300 C2.
21. Dedications of property through platting are documented as discussed in the SAM 5-892.300 C3.

\_\_\_\_\_  
Date

\_\_\_\_\_  
County/City Engineer

**PRE-ACQUISITION (5-491.134)  
OBLITERATED PROPERTY CORNER MONUMENTS**

**134.1 POLICY**

Property corner monuments within or on Mn/DOT right of way lines (permanent and temporary) and that are outside the construction limits should be designated in the construction plan to be protected. If these designated monuments are destroyed by the contractor, Mn/DOT should deduct \$300.00 from monies due the contractor and hold the contractor responsible to “restore damaged property corner to a condition equal or better than existing before the damage was done” (see Mn/DOT Construction Specification Numbers 1712.1 to 1712.4 and 1714).

**134.2 PROCEDURE**

The following guidelines, in descending order, are the recommended procedures for dealing with property corner monuments that may be or have been obliterated during the construction process.

- A. All property corners within or on the R/W lines (permanent and temporary) will be searched for and tied into the project coordinate system.
- B. The field title investigator will inquire of the owner as to evidence of physical existence of these property monuments (certified surveys, etc.). This data will be given to Mn/DOT Surveyor for further investigation. The property monuments that are deemed valid by the Mn/DOT Surveyor should be recommended by the R/W Engineer to be treated as a “cost to cure” in the appraisal.
- C. When a property owner contacts Mn/DOT regarding obliterated property monuments, Mn/DOT will investigate records to determine if the monuments actually existed and if compensation was previously made by Mn/DOT. If the monuments existed, no payment was made, and they were obliterated, the owner should be compensated \$300.00 (or reasonable surveyor’s estimate) per monument to reset the monuments. Mn/DOT will provide survey data it has for remonumentation to be done.
- D. When no documentation of the property monuments exist, Mn/DOT will decline monumentation claims.
- E. The District/Division may, at their discretion, reset known obliterated property corners. This decision should be based on the reputation and positional quality of these monuments.
- F. On projects where there is extensive obliteration of property monuments (usually in subdivided areas), the District/Division may elect to contract a licensed Surveyor to reset the obliterated monuments in lieu of paying compensation. This may be a more cost effective approach.

**PRE-ACQUISITION (5-491.135)  
UTILITIES PLACEMENT AND RELOCATION**

**135.1 POLICY****! General:**

This policy and procedure applies only to those utilities that occupy or will occupy state right of way through permitting procedures.

Utility facilities that are on easements or property owned or controlled by the utility company should follow right of way acquisition policies and Utility Coordination and Plan Content Technical Memorandum.

**! Legal Background:**

The Minnesota Department of Transportation accommodates utility placement within right of way in accordance with Minnesota Statutes sections 161.45 and 161.46 and Minnesota Rules 8810.3300.

**! Utility Accommodation:**

When purchasing right of way, the needs of the utilities should be coordinated with the overall transportation corridor right of way needs and accommodate utilities *to the extent practicable*.

**! Utility Coordination:**

Mn/Dot should take the lead (with utility involvement) to coordinate right of way acquisition activities. This coordination should take place early during project development. These activities should occur prior to the determination of the project construction limits and before the right of way acquisition requirements. Right of way required for the project should be established in consideration of the planned utility relocation. Whenever practicable, the right of way for the project should be sufficient to accommodate utilities relocated as part of the project.

**135.2 PROCEDURES/DUTIES****Office of Land Management**

## General Actions:

When purchasing right of way, the right of way acquisition staff will use the same procedures outlined in the Right of Way Manual.

## System Planning:

Early coordination between Mn/DOT designers, Mn/DOT right of way acquisition staff and the existing utility companies should be done to determine if sufficient right of way has been obtained for the roadway construction.

**Utility Agreements Unit, Office of Technical Support**

## General:

Will Develop and provide standardized forms and procedures for project development staff to be used for design level utility location information requests from utility companies. Location information requests will be specific, and in accordance with applicable State Statutes. For addition information, se the “Utility Coordination and Plan Content” Technical Memorandum.

Coordination/Documentation:

A Utility Coordination activities will be added and maintained in Mn?DOT's new Project Management Systems (ARTEMIS) to provide utility coordination milestones during project development and document that early coordination is occurring.

**Office of Land Management:**

Certification:

Issues Right of Way Certificate (See section 5-491.122 in the Right of Way Manual.)

**APPRAISALS (5-491.200)**

- 5-491.201      **APPRAISAL PROCEDURES**
  - .201.1      Legal Requirements
  - .201.2      Number of Appraisals
  - .201.3      Qualifications of Appraisers
  - .201.4      Evaluation of Performance - Staff Appraisers
  - .201.5      Conflict of Interest
  - .201.6      Contracts With Fee Appraisers
  - .201.7      Appraisal Fees
  - .201.8      Realty-Personalty Determination and Appraisal Procedure
  - .201.9      Valuation of Leasehold Interest
  - .201.10      Sign Valuation
  - .201.11      Uniform Standards of Professional Appraisal Practice
  
- 5-491.202      **APPRAISAL SPECIFICATIONS**
  - .202.1      Data to be furnished by the State
  - .202.2      Appraisal Requirements
  - .202.3      Recommended Format of Detailed Appraisal Reports
  - .202.4      Forms Available
  - .202.5      Uncomplicated Acquisition Appraisals
  - .202.6      Uniform Residential Appraisal Reports
  - .202.7      Minimum Damage Acquisition
  - .202.8      Appraisal of Properties to be Reconveyed
  - .202.9      Appraisal of Contaminated Properties
  
- 5-491.203      **APPRAISAL REVIEW**
  - .203.1      Objective of Review
  - .203.2      Designation of Review Appraisal Personnel
  - .203.3      Responsibility
  - .203.4      Duties
  - .203.5      Review Procedure
  - .203.6      Field Inspection of Appraised Properties
  - .203.7      Field Inspection of Comparables
  - .203.8      Review of Specialty Reports
  - .203.9      Administrative Review
  - .203.10      Appraisal for Eminent Domain Proceedings

**APPRAISALS (5-491.200)**  
**APPRAISAL PROCEDURES (5-491.201)**

**201.1 LEGAL REQUIREMENTS****A. GENERAL**

Any acquisition of land or property for transportation purposes is made on the basis of a certified estimate of market value or damage payable to the owner and other parties of valid interest in the subject property.

The estimate is based on appraisals made either by licensed staff appraisers or by licensed fee appraisers in accordance with specifications made a part of this manual as Section 5-491.202. During the course of appraisal, the owner must be given an opportunity to accompany the appraiser during inspection of the property.

**B. MARKET VALUE**

It is a legal requirement that all real estate to be acquired with an estimated value over \$5,000 shall be appraised for market value. Therefore, all appraisals must be on that basis and may be used as valuation basis for direct purchase payment or testimony in condemnation. The definition of market value is set forth in the Definitions section of the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation:

**MARKET VALUE:** Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. A current economic definition agreed upon by federal financial institutions in the United States of America is:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

### C. GENERAL BENEFITS

A general benefit is a benefit which, as a result of a state-initiated improvement, flows to all property in the immediate vicinity of the improvement. A general benefit is one common to all lands, including the acquired tract. General benefits may not be deducted from either the value of the land taken or the damages to the remainder.

The distinction between a general and a special benefit is often complex and difficult to discern. It is strongly advised that legal counsel be consulted whenever questions concerning this issue arise.

A general benefit is distinguishable from a special benefit in that while a general benefit, as explained above, is common to all land in the immediate vicinity of the subject property, a special benefit is one that flows directly to the subject property. A special benefit may also accrue to other properties in the area of the improvement but not to the extent of a general benefit. Again, legal counsel should be involved in distinguishing between the two types of benefits.

### D. SPECIAL BENEFITS

Special benefits are those which result directly and peculiarly to the particular tract of which a part is taken for a public improvement. Special benefits are ones that are direct, physical, proximate, actual, usable and certain. Physical change is defined as a construction of frontage roads, improved ingress and egress, improved drainage, or similar change in the property. An example of a special benefit would be where the remainder property has a new road providing access suitable for development of lots, that it did not have before the taking. (Special benefits can not, however, be assigned where possible valuable sites are created at new interchanges; the Minnesota Supreme Court has concluded that such enhancements are speculative.) In contrast, general benefits are those which result to an area in general following the completion of a public improvement.

While owners are entitled to just compensation for property for highway purposes, unless benefits are taken into consideration the right of the taxpaying public will not be protected. Appraisers must be familiar with the various benefits that affect a remainder property and recognize special benefits. However, it is important that the special benefits be tied directly to a legal ruling and that the Attorney General's office be contacted to explain the theory that is used.

In Minnesota, special benefits can be offset against both the damages to the remainder and the value of the land taken.

### E. NON-COMPENSABLE ITEMS

The following guidelines may be used as a rule of thumb in identifying items generally considered to be noncompensable:

1. **Speculative Claims.** Generally speaking, any claim which is conjectural, fanciful, doubtful or otherwise lacking in credibility is considered speculative and thus not compensable.
2. **Loss of Business.** Loss of business income, or profits are not compensable as separate items of damage but may be considered by the appraiser only insofar as they are factors affecting the fair market value of the remaining real estate. See below, Section F "CONSTRUCTION-RELATED INTERFERENCES".

3. Traffic Nuisance. Damage due to noise and nuisance of traffic increase. It is conceivable, however, that moving high speed traffic close to an apartment or individual dwelling might reduce the value of that property in the after market, and, therefore, may contribute to compensable damage.
4. Diversion of Traffic. Generally, when an existing highway is left in place, but a new highway constructed in a different location and this new highway effectively diverts traffic from the old highway, any damages which the abutting owners on the old highway might suffer are not compensable.
5. Circuity of Travel. Generally, circuity of travel is not compensable on an original highway which has been upgraded or reconstructed. Obviously, an abutting owner is entitled to reasonably suitable and convenient access to the main traveled lane of a highway in one direction.
6. Police Power. The State may, through its exercise of the police powers, make certain changes and control the highway for the health, safety, or welfare of the traveling public. Purely police power activities are not compensable. The complex question arises when one must determine at what point an act initially thought to be a police power activity goes beyond that point and becomes a taking of a property right for which the construction requires the payment of just compensation. Cases indicate some rules of thumb. The owner is only entitled to access in one direction on the main traveled lanes and as necessary adjunct to that, crossovers may be removed and dividers constructed. Entrances may be limited in the interest of the safety of the traveling public, but all access may not be denied.
7. Relocation Costs. Relocation costs of personal property are not compensable as payment for real property. However, under Minn. Stat. §117.52 (1994) and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, there is a provision for payment of various relocation costs and expenses incurred by persons and businesses displaced by a right of way acquisition.
8. Frustration of Plans. Loss due to the frustration of plans for the future development or costs for planning a new location for development are not compensable items. However, the plans of an owner might well be allowed as evidence as to the highest and best use of the property and the owner may be compensated on the basis of the taking of the property on the basis of that highest and best use.
9. New Access Taking. Loss of access due to location of non-access highways through a property where there was no road in existence prior to the establishment of the new highway is not compensable.
10. Increase in Value Due to the Public Project. No increase or decrease in the before fair market value of real property at or prior to the date of taking, which may be caused by the public improvement for which the property is acquired, may be considered in determining just compensation. Physical deterioration within the reasonable control of the owner may be considered.
11. Loss of Visibility. Loss of visibility of a property from the traveling public on a public road is generally not a compensable item of damage. See exception below in Section G, LOSS OF VISIBILITY--WHEN COMPENSABLE.

#### F. CONSTRUCTION-RELATED INTERFERENCES

"In partial taking condemnation action, evidence of construction-related interferences is admissible [may be considered by the appraiser] not as a separate item of damages, but as a factor to be considered by the finder of fact [the appraiser] in determining the diminution in market value of the remaining property." State, by Hubert H. Humphrey, III v. Donald O. Strom, et al., 493 N.W.2d 554, 556 (Minn. 1992).

#### G. LOSS OF VISIBILITY--WHEN COMPENSABLE

"In partial taking condemnation action, to the extent that loss of visibility to the traveling public on a redesigned highway results from changes in [made on] the property taken from the owner, evidence of the loss is admissible [may be considered by the appraiser], not as a separate item of damages, but as a factor to be considered by the finder of fact [the appraiser] in determining the diminution in market value of the remaining property." State, by Hubert H. Humphrey, III v. Donald O. Strom, et al., 493 N.W.2d 554, 556 (Minn. 1992).

(For certification purposes, it will be necessary to allocate loss of visibility damages since they are not eligible for Federal reimbursement but are compensable under State law.)

### 201.2 NUMBER OF APPRAISALS

#### A. REAL ESTATE APPRAISALS

One appraisal is required on all property where values and or damages are not expected to exceed \$250,000 (including fixtures). Two appraisals are required on all parcels over \$250,000. The Manager of the Valuation Section may order two appraisals for most substantial takings or those of special complexity.

The Manager may waive the two appraisal requirement when it is initially estimated that the parcel damages will not exceed \$250,000, even though the one appraisal subsequently supports damages slightly over \$250,000.

When a separate valuation of machinery, equipment or other speciality items is necessary, one report is required when the value of, or the compensation for these other items to be acquired, can reasonably be expected to be under \$150,000. Two reports are required when the same can reasonably be expected to exceed \$150,000.

In the event anticipated damages are difficult to estimate prior to appraisal, or it is expected that the appraisal will be a difficult one, it may be desirable to order two appraisals initially rather than run the risk of undue delay in obtaining satisfactory appraisals.

In other situations where lesser damages are expected one appraisal will suffice at least initially. Where condemnations result and court awards are eventually appealed, a second appraisal is often warranted in order that adequate testimony be available in the event the case goes to a commission hearing or to jury trial.

#### B. SECURING MORE THAN TWO APPRAISALS

Additional appraisals will be secured under the following conditions with approval of the Manager of the Valuation Section.

1. Where there is a wide divergency in the first two appraisals that cannot be resolved.
2. At the request of the Attorney General when an additional appraisal is needed for court purposes.
3. On recommendation of either the Review Agents or the Direct Purchase Supervisor that additional appraisals are needed due to valuation problems about the property. A request for additional appraisals shall show the reason for the request.

### 201.3 QUALIFICATIONS OF APPRAISERS

All real estate appraisers must hold a valid Minnesota Real Estate Appraiser License. (Requirements are set out in Minn Stat. Chapter 82B (1994.)

The State of Minnesota, Department of Commerce, has established the following license classifications based on education, experience and examination requirements:

#### 1. REGISTERED REAL PROPERTY APPRAISER

May appraise residential real property or agricultural property when a net income capitalization analysis is not required by the uniform standards of professional appraisal practice.

#### 2. RESIDENTIAL REAL PROPERTY APPRAISER

May appraise noncomplex residential property or agricultural property having a transaction value less than \$1,000,000 and complex residential or agricultural property having a transaction value less than \$250,000.

#### 3. CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER

May appraise residential or agricultural property without regard to transaction value or complexity.

#### 4. CERTIFIED GENERAL REAL PROPERTY APPRAISER

May appraise ALL types of real property.

Uncomplicated acquisition appraisals and the Uniform Residential Appraisal Report (URAR) may be performed by persons holding any of the four described appraiser licenses.

Detailed formal appraisals, however, require the Certified Residential Real Property Appraiser License or the Certified General Real Property Appraiser License, depending upon the type of property involved.

These different types of appraisal reports mentioned above will be described in Section 202.

Minimum Damage Acquisition Memorandums are not appraisals and can be made by a capable person with knowledge of local real estate values (see 202.7).

## **201.4 EVALUATION OF PERFORMANCE - STAFF APPRAISERS**

The work of staff appraisers is continually being evaluated by supervisors. The performance review and a conference with the employee is completed once a year as required under the Mn/DOT Human Resources Payroll Procedures Manual.

## **201.5 CONFLICT OF INTEREST**

Staff and fee appraisers should promptly disqualify themselves from appraising properties where there is personal or business relationship with any interests in the property to be appraised. Staff appraisers shall be governed in their overall conduct by the rules and regulations established for all State employees, and by the ethics provision of the Uniform Standards of Professional Appraisal Practice.

## **201.6 CONTRACTS WITH FEE APPRAISERS**

Fee appraisers are employed by the State as needed to supplement the work of staff appraisers, and where expert testimony of persons outside the Department is needed. Fee appraisers are selected by the appraisal supervisors, subject to the approval of the Manager of the Valuation Section. They are selected from the State list of qualified, licensed appraisers.

An official notice is published in the State Register inviting qualified appraisers to submit a request to be placed on the state list.

Persons interested in doing fee appraisal work for the State must make application prior to the September 30th of each year and include their license qualifications for real estate appraising. This then enables them to be on the State list and available for appraisal work for Mn/DOT and other state departments.

A master contract is made with each fee appraiser. The contract may be for a period not to exceed two (2) years. Individual appraisal assignments are made to fee appraisers on a work assignment form known as "Exhibit B" of the contract which specifies the parcels to be appraised, the fees, and the date due. This form is used to requisition and incur funds for payment. All materials for the assignment are sent to the appraiser as soon as approvals are received.

Evaluation of fee appraisers are made on a regular basis. Consultation is held periodically with the staff of the attorney general on the performance of fee appraisers at eminent domain hearings and trials.

## **201.7 APPRAISAL FEES**

When it is determined that fee appraisal services are necessary, an appraisal supervisor shall inspect the project site and shall prepare an estimate of a per parcel fee considered to be fair to both the fee appraiser and the State prior to entering into an appraisal contract. The usual procedure is to estimate the amount of time required to complete the appraisal. An appropriate unit rate can then be applied to arrive at the final monetary estimate.

As an aid to establishing a reasonable fee, careful consideration should be given to but not necessarily limited to the following: The complexity of the work and the amount of research necessary for the appraisal, the amount of information and data to be provided the appraiser by the State, the number of parcels included in the assignment, the location and conditions pertinent to the project, and the time in which the fee appraiser will be allowed to do the work.

The appraisal assignments are subject to the approval of the Manager of the Valuation Section and of the Director of the Office of Land Management.

Assignment may also be made on the per diem basis in amount suggested by the appraiser, subject to the approval of the Manager of the Valuation Section and not exceeding a total amount specified by the contract. Per diem contracts may be used for complex appraisal assignments involving special research and studies. It is appropriate to use this method when it is difficult to accurately estimate the time and expense required for the assignment.

Assignments for updating are made on the same basis as the original reports, giving consideration to the amount of work and time involved. In updating, a flat percentage of the original fee is not acceptable as representative of fair payment. The fee must be based on time and expense of an updated report.

Assignments for appraisal of fixtures and equipment are based on type and quantity of the items. The fees are shown separately on the request for approval and should include the reason for the fee submitted.

## **201.8 REALTY-PERSONALTY DETERMINATION AND APPRAISAL PROCEDURE**

### **A. LEGAL REQUIREMENTS**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, governs Federally-funded State projects (and also governs State projects which are not Federally-funded; see Minn. Stat. §117.52 (1994). Section 302 of the URA requires that, if the head of the agency acquires any interest in property, then the agency shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which the agency requires to be removed.

For the purpose of determining the just compensation to be paid, such building, structure or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right of obligation of a tenant to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

### **B. LEGAL REQUIREMENTS FOR CLASSIFICATION**

The classification of building structures, and improvements (including equipment and fixtures) as between realty and personalty is required in order that the appraiser may list and evaluate each item determined to be realty.

Realty-personalty determination shall be based upon applicable legal guidelines and consideration of the following four realty-personalty tests for each item.

1. Annexation-fact and character.
2. Purpose and adaptability of article annexed.
3. Intent of parties concerned.
4. Relationship of the parties.

It is important that both owner and tenant be consulted on all questions about the buildings, structures, and improvements in order to classify the items properly.

### C. PROCEDURE FOR APPRAISAL SUPERVISORS

The appraisal supervisor shall list, classify, and determine ownership of all buildings, structures, and improvements (including fixtures and equipment), and major items of personal property on each property. This is done before appraisals are started. The appraisal supervisor must give both owners and tenants the opportunity to accompany him on his inspection and listing of property, and secure the needed information from them so he can make a proper classification. The appraisal supervisors shall determine ownership of contested items based on the preponderance of evidence available from the written lease, or additional information furnished by either owner or tenant. When in doubt, he should consult his supervisor on resolving further questions of classification. Ultimate determination of questionable items should be referred to the Office of the Attorney General.

The appraisal supervisor shall clearly describe the electrical and plumbing cut off or disconnect points for each item to be removed from the premises. The appraisal supervisor shall on all complex parcels, i.e., those containing a large quantity of fixtures and personal property identify disconnect points by attachment of orange tape in the instances where permission from the owner to do so can be obtained.

The appraisal supervisor shall, on all complex parcels, inform the project relocation advisor of the date and time of the classification inspection so that the relocation advisor may attend.

The appraisal supervisors will include the classification and lists of building, structures, and improvements, including fixtures and equipment in the assignment to the appraisers.

## 201.9 VALUATION OF LEASEHOLD INTEREST

Upon receipt of assignment to appraise the property, the appraiser will review the instruction on what is to be appraised, and the ownership. This is done so that the appraiser may allocate values to owners and tenants.

The appraiser shall analyze and verify the list to make certain it is correct and complete. If there are any corrections to be made, he should contact the appraisal supervisor.

The following provisions of the Uniform Relocation Act govern the instructions given to appraisers in appraising this type of property.

1. The State is required to acquire an equal interest in buildings, structures, or improvements located upon the real property to be acquired or adversely affected by the use to which the real property will be put. In other words, a tenant owner is entitled to compensation for these improvements which cannot be removed from the real property acquired without suffering substantial loss in value to themselves or to the underlying real property.
2. The State is to disregard the tenant's right or obligation to remove the improvements under the lease in determining eligibility for payment of compensation. The right of removal is not to be construed in such manner as to prohibit compensation for those tenant-owned improvements. The owner of buildings, structures or improvements, who is any person having a possessory interest in them, is to be treated the same as any other owner.

3. The tenant is entitled to the fair market value which the building, structure or improvement contributes to the fair market value of the real property to be acquired (contributory value), or the fair market value of the building, structure, or improvement for removal from the real property (removal value), whichever is greater. In any case where the appraiser determines that the present use is the highest and best use and current lease would be renewed, contributory value is the appropriate value to be determined as it will always exceed the removal value. Removal value of buildings, structures, or improvements is the total of their value in place for the remaining term of the lease or their remaining economic life considering normal maintenance, whichever is less, plus the present worth of their salvage value at the end of the lease term. Removal value is the appropriate value to be determined when the appraiser determines that the current lease, in the absence of the proposed project, would not be renewed. Removal value is salvage value only in that very rare instance when the lease has already expired and, in the absence of the proposed project, it would not be renewed.

The tenant's interest in the property as a result of a favorable lease must also be appraised. In this appraisal it is necessary to show, by comparison with leased properties, the market rent of the property, and then compare this market rent with the contract rent.

The value of the leasehold interest is the present (discounted) worth of rent saving, when the contractual rent at the time of appraisal is less than current market rent. The value of any leasehold interest (lessee) will require an equal deduction from the value of the leased fee estate (lessor).

## 201.10 SIGN VALUATION

### PROCEDURE

Sign valuation procedure is basically identical to valuation procedures utilized for all types of real estate as outlined in 5-491.202.

1. All three approaches to value: market, income, and cost, should be used in these instances where adequate data is available.
2. In the majority of cases only the cost approach will be utilized due to lack of other data. Cost documentation can be through use of any of the nationally recognized cost services or through the use of local cost data. The cost source used must be documented in the appraisal.
3. Depreciation may be documented by either the market or observed methods as stated in 5-491.202.

### VALUATION OF SIGNS WITHIN NEW RIGHT OF WAY

#### A. Land owner owns the signs.

1. State must purchase the sign if it is classified as real state unless the owner requests that it be relocated.
2. If the right of way parcel is assigned to more than one appraiser, all appraisers must appraise the sign as part of the overall acquisition and include the amount in their final value conclusion, certificate of appraiser, and it must be included in the review certification.
3. If the owner requests that the sign be moved, the appraiser must so note in his report and state that the sign is to be relocated with the assistance of the District Staff, as provided under current relocation laws and procedures.

Under this circumstance, the sign is appraised but the value is not included in the appraiser's final value conclusion, certificate of appraiser, or in the review certification. The sign appraisal is included in the appraisal report for comparison with the estimated relocation cost.

B. Sign owner is leasing the sign site.

1. The Attorney General's staff advises that signs on leased sites are personal property regardless of their manner of attachment.

In this instance it is only necessary for one appraiser to value the sign. The valuation shall be based on the estimated depreciated reproduction cost. The estimate will serve as a basis of comparison to the estimated cost to relocate the sign. Depreciated reproduction cost is normally obtained from companies which produce signs. This value is not added to the appraiser's final value conclusion, certificate of appraiser, or to the review certification. It shall be shown in the appraisal and noted on the appraisal review sheet.

2. All appraisers assigned to the parcel must appraise leasehold interests a sign owner might have in the site.

Leasehold interests are appraised on the basis of contract rent versus economic rent as with all other real estate. The rental advantage, if any, is discounted for the remaining term of the lease by the use of discount tables. The amount of leasehold interest must be stated in the appraisal reports and in the State's review. If none, state none.

C. Trade Signs

1. By virtue of their unique identity, trade signs remain personal property and are not purchased by the State.
2. If a trade sign is located within the right of way to be acquired, the State can purchase the base or foundation, standards or poles, and the electrical hookup as part of the real estate, but not the sign itself.
3. The sign owner is entitled to costs for relocation of the sign.

SIGN VALUE REVIEW

- A. In all instances where a sign is to be purchased it shall be included as a part of the normal parcel review.
- B. In those instances that a sign is to be relocated, the valuation of the sign shall be shown separately on the parcel review sheet. In cases where it is needed this information will then be available to the direct purchase and relocation personnel without returning the file to the Valuation Section.

CONTROL OF OUTDOOR ADVERTISING DEVICES

See also Valuation of Signs Acquired Under the Highway Beautification Program (5-491.304) for further information on the procedures for the acquisition of signs along the Federal-Aid Interstate and primary trunk highway systems in Minnesota as well as signs in the right of way.

SIGN RELOCATION COSTS

It is the responsibility of the District Staff to determine sign relocation costs in their respective districts.

**201.11 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE**

Mn/DOT staff appraisers and fee appraisers will adhere to the most current version of the Uniform Standards of Professional Appraisal Practice as published by the Appraisal Foundation. A current copy of these standards will be kept in the Mn/DOT Valuation Section for reference.

**APPRAISALS (5-491.200)**  
**APPRAISAL SPECIFICATIONS (5-491.202)**

**202.1 DATA TO BE FURNISHED BY THE STATE**

- A. Ownership information including names of owners and tenants. Include pertinent information on leases and easements from abstract of title. To be verified by appraiser when possible.
- B. Address of property.
- C. Legal descriptions of the property to be appraised, and of the property to be acquired by the State.
- D. The rights and interests to be appraised. Tenant's interests and easement rights shall be assigned and appraised.
- E. Parcel sketch.
- F. Building sketches if buildings are taken.
- G. Lists showing the classification and ownership of buildings, structures, and other improvements including fixtures and equipment.
- H. Right of way map showing limits of right of way, the separate parcels to be appraised, the area of the total ownership, right of way to be acquired, access before and after, and the area remaining.
- I. Data on topographic and construction features of the proposed highway or other improvement.
- J. Statement of non-compensable items and interpretation of state law regarding benefits.
- K. Appraisal forms.
- L. Advise as to which approaches are expected.

**202.2 APPRAISAL REQUIREMENTS**

The appraiser will submit a written appraisal in duplicate, unless otherwise specified, for each property appraised which shall:

Be complete in narrative or uniform appraisal report style, with the use of appropriate forms.

Follow the general outline furnished in these requirements.

Be submitted in a formal style with exhibits in the report.

Include a table of contents when the report includes several sections.

These requirements are intended to coincide with those of professional appraisal societies as to content, reasoning and format. The appraiser should add any information that will assist the reader to understand the problem, or to clarify the reasoning used by the appraiser to arrive at a final estimate of value.

- A. The before and after method of valuation shall be used on partial acquisition, except where it is obvious there is no damage or benefit to the remaining land or improvements, other than minor cost-to-cure items or other items of minor damage. In these cases, the appraiser may appraise the land only and show values for the part taken. The appraiser may also include minor cost-to-cure items, and other items of minor damage.
- B. If the assignment is a partial taking the appraiser should review the list of non-compensable items. The appraisal shall not value items that are not compensable under State law.
- C. Special benefits can be offset against both the damages to the remainder and the value of the land taken. When considering special benefits, the appraiser should consult with the supervisor for specific instruction on how to handle this item.
- D. If the appraisal assignment includes machinery and fixtures and (or) a tenant's interest, the appraiser should refer to the special instructions in this manual in Section 201.8, Realty-Personalty Determination and Appraisal Procedure.
- E. Properties with public utility easements will be appraised considering the effect of the easements on property values. It is important to consider the effect of easements on property value.  
  
(The utility section will acquire the utility company's easement rights in a separate agreement.)
- F. Properties with private utility easements or road easements will be appraised subject to these easements. When these are affected by the taking, the appraiser should consult the supervisor for specific instructions as to the appraisal of the separate interests.
- G. Appraisal assignments will often include easements to be acquired for many different purposes. The most common are temporary easements for construction, building removal, drainage, flowage, and navigation. The effect of each easement shall be carefully considered as to effect on highest and best use and the after value of the property. Full consideration should be given to, and due allowance made for, the substantial enjoyment and beneficial ownership remaining to the owner, subject only to the interference occasioned by the taking and exercising of the easements.
- H. The value of temporary easements may range from a nominal value to the total value of the property. The value of a temporary easement is dependent upon what is actually occurring in the area and the overall affect of the acquisition on the property being appraised.
- I. There are several methods of appraisal that can be used to estimate the value of temporary easements. The value of the part lost can be measured by the cost to cure basis, that is, the cost of replacing the part lost under the temporary easement for the period of the easement. An example would be the cost to rent substitute land. It can also be measured by accurately estimating the value of the property after the taking and subject to the easement. The value of the easement can also be measured by estimating the rental value for the period of the easement.
- J. The rental basis can be done by estimating the actual rent for the land based on rentals in the area. This may be practical for the appraising of farm land and for the appraising of bare commercial district land which may, for example, be leased for use as a parking lot.
- K. The reversionary method may be used to estimate the value of temporary easements. The reversionary factor at the proper interest rate for the period for the temporary easement, multiplied by the fee land value, would represent the after value of the land encumbered by the

temporary easement. Thus, the difference between the fee land value (before value) and the reversionary value, i.e., the reversionary factor multiplied by the fee land value (after value), equals the damages due to the temporary easement by the use of the reversionary method. Support must be given for the interest rate when using this method.

- L. In making the estimate of the after value, it is important to consider the condition of the property after the easement is released, and any effect that the temporary easement may continue to have on the rest of the property, which are properly classified as severance damages. It is important to be consistent in measuring the value of temporary easements.

### 202.3 RECOMMENDED FORMAT OF DETAILED APPRAISAL REPORTS

The detailed formal appraisal format is used when an in-depth analysis and presentation is necessary for complex or high value parcels. This format is recommended when the Uncomplicated Acquisition Appraisal or the Uniform Residential Appraisal Report (URAR) formats are not applicable.

A. Table of Contents

B. The Valuation Summary and Conclusions form should show the following information:

- |                                 |  |
|---------------------------------|--|
| 1. State project no.            | 8. Present use                           |
| 2. Parcel no.                   | 9. Highest and best use before and after |
| 3. County, owner                | 10. Land area                            |
| 4. Property address             | 11. Lot size                             |
| 5. Appraisal date               | 12. Improvements                         |
| 6. Rights & interests appraised | 13. Summary of appraisal                 |
| 7. Zoning                       | 14. Final estimate of value              |

C. Parcel Sketch

The appraiser should show on the parcel sketch:

1. Boundary dimensions of entire ownership
2. North arrow
3. Location of improvements
4. Location of roadways and access points
5. Area to be acquired (colored in)
6. Area of each remainder
7. Name of streets or roads abutting the property
8. Distances from taking areas to improvements
9. Landscaping, fencing, or other significant features

D. Photographs

Identified photographs of the subject property, including all principal above-ground improvements and any unusual features affecting the value of the property.

1. A good front photograph will be placed in the beginning of the report, with date taken shown.
2. Photographs will show rear and side views of principal buildings.

3. Photographs may be mounted on plain white paper with appropriate captions, including date taken.
4. Photographs of unusual features, equipment, and interiors should be included when appropriate.
5. Aerial photographs may be included to show other features of the property and the area.

E. Purpose of the Appraisal

This shall include a statement on the values to be estimated, and any special items to be included, such as separation of interests, or valuation of easements, certain buildings, improvements, or fixtures.

F. Definition of Market Value

G. Statement of Contingent and Limiting Conditions, if any

H. Description of City or Area

A brief description of area should end with a conclusion as to the future trends in property values, and how such trends may relate to the future of the subject property.

I. Description of Neighborhood

The description of the neighborhood should explain how it affects the value, and the highest and best use of the property. The use of properties in the immediate area of the subject property should be shown.

Depending on the type of property and scope of the problem, the items that are significant to the valuation should be covered.

J. Land or Site Description

The description of the land or site should include the dimensions and area, topography and drainage, utilities, easements, and all factors that are important to its potential use.

K. Zoning

The permitted uses, parking requirements, and other pertinent factors should be listed. If zoning could be changed, there should be a full discussion; also include reasons why there is a probability of change. If it is desirable to present a full copy of the ordinance, it should be included in the exhibit section of the report.

L. 5-Year History of changes in ownership of the subject property and corresponding sale prices.

For all transactions during the past five years show the following:

1. Grantor
2. Grantee
3. Date of purchase
4. Verification
5. Recorded data showing book & page
6. If sales details are not obtainable, or the property has not been sold in the past five years, the appraiser should make note of this.

Analyze the details of the sale and relationship to the present value of the property.

M. Assessments and Taxes

The affect of taxes and any special assessments should be discussed.

N. Description of Improvements

This description should include the following:

1. Age and condition
2. Dimensions and area
3. Design and layout, number of units, rooms, etc.
4. Construction details and finish
5. Functional utility
6. Equipment, fixtures and how they add value to building
7. Site improvements
8. Building sketch and building analysis to be verified by appraiser (included if buildings are taken).

O. Highest and Best Use

The highest and best use of the property as improved must be analyzed and discussed in the appraisal report. If the existing use is not the highest and best use, in either the before or after situation, it is necessary to explain the factors that justify and support a different use. If there is a possibility of a change in zoning, the highest and best use for such zoning should be stated, and a reference made to the section on zoning for a full discussion on the change.

P. Appraisal of Property Before the Taking

Use the most applicable approach or approaches to value. In most cases when there is sufficient sales data available, the only approach necessary will be the market approach. In some cases cost approach or income approach will be the most appropriate.

Q. Market Approach

Discuss the real estate market in the area, and tell something about the number of properties being sold and on the market. Briefly discuss the number of sales that were investigated in order to select those that are most comparable to the subject property.

The information on comparable sales properties should be completed on an appropriate form. Forms are provided for land, residential, commercial, industrial and farms. The following information should be furnished:

Property address	Identified photographs of principal improvements
Grantor	Financing
Grantee	Price paid
Legal description	Date of sale
Present use	Name of person confirming price and conditions of sale
Zoning	Total area
Highest and best use	Dimensions
Utilities	Improvements
Unusual conditions of sale	
Reason for buying or selling	
Comparable sales map showing location of each sale and the subject property.	

The basic steps of the market approach are as follows:

1. The selection of an appropriate unit of comparison, such as square foot, acre, room, etc.
2. The explanation of the adjustments for differences between the comparable sale and the subject property.
3. When a part of the consideration for the property includes a contract for deed or financing provided by the seller, the comparable sale price should be adjusted to the cash equivalent, when justified. A complete explanation should be provided showing how the cash value was determined.
4. The direct comparison of each item requiring adjustment from each comparable sale to the subject. If superior, state how; if inferior, state how. These statements must be specific for the comparable sales and the property being appraised. The order of the adjustments should be arranged in the same sequence from one comparable sale to the next.
5. The estimate of the amount of each adjustment in dollars or percentage amounts.
6. The adjustments and reasoning shall be shown on a form entitled ANALYSIS OF COMPARABLE SALES. The explanation of the reasoning for the adjustments must either be shown on the form or on a separate page.
7. The explanation of the amount of the adjustment made by abstracting values from sales.
8. It is important that the sales selected are comparable to the subject property, and bracket the value.
9. The gross rent multiplier or gross annual multiplier may be used as a major unit of comparison.
10. Include a written summary of the correlation of the comparable sales into an estimate of market value.

#### R. Cost Approach

1. Land value is estimated by the market approach, using the appropriate forms for setting down information on comparable sales and making the analysis of the sales. It is important to select comparable sales that have similar zoning, uses, size, and location. Adjustments should be explained, based on market analysis, and should lead to the estimate of land value.

2. The reproduction or replacement cost estimate should be explained and supported. It may be necessary to use more than one data source, such as a cost service and a local contractor.

The specific source of cost data must be shown; the name of the local contractor or the name and page of the cost index. The specifications for the buildings should be accurate, and conform with the description of the improvements.

Cost estimates may be supported by showing the cost of recently completed comparable structures. These must be identified and analyzed with appropriate adjustments.

Depreciation is estimated as follows:

- a. Market Method

The subject property is compared to sale properties on which depreciation rates have been calculated. Space is provided on comparable sales forms for this calculation. Land value and costs at the time of sale are used.

- b. Observed Method

The property is inspected thoroughly.

The physical, functional and economic depreciation is estimated separately, showing a dollar or percentage amount for each type.

A short explanation of the three types of depreciation shall be given specifically showing how they relate to the depreciation of the subject property.

- S. Income Approach

1. This approach should be used when there is sufficient data available to develop the approach. It is applicable to income property which an investor will buy for a return on his investment. The present rental income for the current year should be shown. Using a unit of rental comparison, such as square foot, room, or apartment, etc. estimate the current economic rent of the subject. In estimating the economic rent, explain differences between the comparable rental property and the subject.
2. The appraiser should show actual expenses for the current year. The appraiser may prepare a stabilized statement showing each item of expense in which the appraiser estimates the expenses for an average year. The appraiser should be careful to include all normal expenses that are involved in the production of net income to the real estate.
3. Capitalization of net income shall be at the rate prevailing for the type of property and the location. Capitalization rates should be supported by development of rates from sales of comparable properties that provide information on rental rates and return on the investment.

T. Correlation and Final Value Estimate

The correlation should show the separate indications of value by each approach. It is important to review the strong and weak points in each approach, and present good reasons for the final value estimate.

U. Description of Property Taken (Partial Takings)

The description of property taken should include description of both land and improvements and refer to the parcel sketch and to other appropriate exhibits in the report.

V. Description of Property After Taking

The description of the land or site will include the dimensions and area, topography and drainage, access and all factors that are important to its potential use after the taking. Any changes in highest and best use should be explained fully.

W. Appraisal of Property After Taking

1. The most applicable approaches to value should be used.
2. The appraiser should follow the same steps as used to estimate the before value.
3. The appraiser should select comparable sales that are similar to the property after the taking and that bracket the subject property in value.
4. If support by the usual methods of market or cost or income data is not feasible, the appraiser shall so state, and explain why it is not feasible. In such instances, the appraiser must then fully explain the reasoning for his after value estimate.
5. It is important to explain any estimates for improvements such as fencing and landscaping, and to explain the reasoning behind any items of severance damage.

X. Allocation of Damages and Correlation

The allocation must show the land area acquired and its estimated value, the improvements taken and their estimated value, and the severance damages, if any, to the remainder. This allocation is required by law.

The total amount will equal the difference between the before value and after value.

Final damage and value estimates should be rounded, in order to be realistic and reflecting what is found in the market.

Where damages or value are less than \$500.00, rounding to the nearest \$50.00 is appropriate. On parcels over \$500.00 rounding to the nearest \$100.00 will be considered appropriate. On larger parcels, the amounts may be more as reflected in the market. Rounding should be limited to final estimates.

Y. Legal Description

The Federal Aid Project Number must be shown on Federal Aid projects only.

Z. Certificate of Appraiser and Qualifications of Appraiser

## 202.4 FORMS AVAILABLE

Appraisal forms available through the Central Office Valuation Section.

## 202.5 UNCOMPLICATED ACQUISITION APPRAISALS

The uncomplicated acquisition appraisal may be used for those acquisitions which, because of their low value or simplicity, do not require the in-depth analysis and presentation necessary for detailed appraisals. These are simple total takings of low valued land, or partial acquisitions (strip takings). If there are severance damages to the remainder, they must be nominal (usually under \$10,000), or those that can be measured by the cost-to-cure method. If the cost-to-cure method is used, the appraiser shall show his calculations.

**Note:** Uncomplicated acquisition appraisals will not be used in Eminent Domain Proceedings except in those cases where there is an uncontested value placed on the taking such as agreed upon awards or parcels with title defects.

The appraisal for this type of acquisition shall contain the following items:

1. The purpose or the function of the appraisal is stated in the certificate of the appraiser. The identification of the estate being appraised, such as fee or easement is included in the appraisal form.
2. An adequate description of the physical characteristics of the property being appraised and, in the case of a partial acquisition, an adequate description of the remaining property, a statement of the highest and best use, the present use, and a five year sale history of the property.
3. In most cases, only the market approach can be used in an appraisal of this type. A description of the comparable sales on the appropriate form shall include a description of the physical features and the legal economic factors such as: the parties to the transactions, the source and method of financing, and a verification by a party involved in the transaction. The comparable sales may be included in a comparable sales book that is submitted with several appraisals on a project. A short explanation of values found for a unit of comparison such as square foot or acre should also be included by narrative and supported by the range of comparable sales.
4. Cost new less observed depreciation may be used for garages, sheds, fences, or other minor improvements which are to be taken.
5. A statement of the value of real property to be acquired, and, for partial acquisitions, a statement of damages and benefits to the remaining real property, shall be included in the appraisal form.

6. The effective date of valuation, the date of the appraisal, signature and certification of the appraiser, shall be shown on the certificate of the appraiser.
7. A parcel sketch or right of way map will be included in the material available for review showing the dimensions of the property and the part taken.

Most of the required items will be included on the three sheets identified as forms for the uncomplicated acquisition appraisal.

## **202.6 UNIFORM RESIDENTIAL APPRAISAL REPORTS**

The Uniform Residential Appraisal Report (URAR) may be initiated for total or partial acquisition if it is used in conformance with the Uniform Standards of Professional Appraisal Practice. Any material that is important to the valuation process, such as a definition of the value being estimated, certification, statement of limiting conditions, maps, sketches, legal descriptions, and explanatory adjustment comments, should be included as addenda to the URAR format. In all situations, the valuation process must be followed in performing market research, analyzing data, applying appraisal techniques, and integrating the results of the analysis into an estimate of defined values.

## **202.7 MINIMUM DAMAGE ACQUISITION (MDA)**

### **POLICY**

The acquisition of uncomplicated parcels of permanent right of way or temporary easements can be accomplished without a formal appraisal if a total damage estimate by an appropriately licensed appraiser indicates an acquisition cost of \$10,000 or less and until January 1, 2001 by a qualified person with appraisal knowledge when acquisition costs are at \$5,000 or less.

### **PROCEDURE**

#### **A. Identification**

In the outstate districts and Metro Division, the identification of potential MDAs should be made by the District R/W Engineer/Land Manager or his designee who has appraisal experience. Potential MDAs should be identified by the time the R/W package is completed and submitted to the Central Office (C.O.) When Metro Division or outstate districts have not identified potential MDAs in the R/W package, the C.O. Valuation Section may make a determination to use MDAs as appropriate.

#### **B. Preparation**

Either District personnel appointed by District R/W Engineers/Land Manager, or C.O. Valuation Section staff appraisers should prepare MDAs when possible.

Note: If District has completed the MDA initially, the C.O. Valuation Section should be notified so they do not duplicate assignment.

Comparable sales developed in the appraisal process should be used with a short statement showing how values were arrived at in the preparation of MDAs. When MDAs are prepared for several parcels, a comparable sale book should be prepared.

When there is not a wide variance in land values, a schedule of values may be developed for various land types and used in the MDAs with a brief narrative discussion showing the basis for values developed. This

should be placed in the comparable sale book used in the preparation of the MDA.

For minor takings (i.e., bridge widening, cattle pass extinguishment, guardrail stipulation, channel change easement) values could be assigned without specific comparable sales, but contact with real estate agents and assessors should be made for guidance, and then documented.

The individual completing the MDA should make sure the values assigned are reasonably consistent with values assigned on other MDAs and appraisals on the project.

Mn/DOT's minimum amount is \$100 for compensation purposes, therefore any MDA estimate under \$100 must be rounded up to \$100.

The \$10,000 maximum may be exceeded by a nominal amount to include cost to cure items, e.g. fencing, sprinkler systems, etc. Support for this cost should be included in the MDA.

Owners should be contacted and provided the opportunity to discuss concerns.

**C. Approval**

A District R/W Engineer/Land Manager, Assistant R/W Engineer or appraisal supervisor must approve MDAs. When a schedule of values is developed and used, MDA approval could be of the schedule rather than each individual MDA.

**D. Offers**

MDA offers should be made either by 1) the preparer of the MDA, or 2) a direct purchase agent if that individual has an adequate knowledge of sales data to discuss the offer.

To expedite acquisition, Districts should try to combine duties, such as having the same individual do field title work, prepare MDAs, and make offers. Ideally, when the owners are contacted and inputs obtained, the MDA can be completed, the offer conditionally made, and the acquisition documents signed all during the one contact.

Project management must be notified to encumber funds.

In the interest of good public relations, the elapsed time should be kept to a minimum with offers made as soon as possible after completion of the MDAs.

**E. Administrative Settlements**

When MDA estimates are used, justified settlements can be made over \$10,000 ceiling without obtaining an appraisal.

(See 302.41 for procedure)

**F. The use of MDA value finding at a Commission hearing is strictly prohibited.**

**202.8 APPRAISAL OF PROPERTIES TO BE RECONVEYED**

Appraisals on properties owned either in fee or easement are made to estimate current market value as provided in Minnesota Statutes Section 161.43 and Section 161.44 (1994).

The market value estimate shall be on the property owned in fee or easement by the State. It is important to evaluate the highest and best use of a parcel giving consideration to size and shape, access to public

roads, availability of utilities, existing zoning, setback requirements, number of abutting owners and other pertinent factors that may influence the highest and best use.

The premise of highest and best use of the land being reconveyed will be the basis of the market value estimate for all reconveyance parcels. In instances where the land being reconveyed is developable or large enough to be used by itself, it would appear that the market approach to value may be the most applicable valuation method to use in valuing the parcel being reconveyed. In instances where the land being reconveyed is not developable or large enough to be used by itself, the appraiser may estimate the market value of the land being reconveyed by use of real estate sales and listings or by the use of other acceptable appraisal techniques with major consideration given to the highest and best use of the parcel being reconveyed.

It may be necessary to interview adjacent property owners and various other parties to determine possible uses for the tract being reconveyed.

Value estimates less than \$10,000 will be prepared by appropriately licensed personnel and will be submitted by the District Right of Way Engineer on a form provided for that purpose.

Reconveyance Appraisals over \$10,000 shall conform to the appraisal specifications as outlined in this Manual (5-491.200). This may be done by use of the Uncomplicated Appraisal on the Before and After Appraisal format as explained in this manual.

Appraisal of access only will require a before and after appraisal of the property to which access will be conveyed.

## **202.9 APPRAISAL OF CONTAMINATED PROPERTIES**

The purchase of contaminated properties presents acquiring authorities unique circumstances and challenges throughout the acquisition process. Up front review, planning and communication between all the players in this process helps alleviate unnecessary “surprises” and their associated costs in project dollars and time.

Although Mn/DOT professional appraisal staff and private valuation consultants should be ever vigilant regarding potential site contaminants they should also be aware of initial Mn/DOT acquisition sources of property information.

Mn/DOT Preliminary Design personnel and District personnel performing field title work are actively involved in identifying site contaminants. Environmental services should be involved in detailed identification quantification and where appropriate estimating remediation costs in the preliminary acquisition stages. Therefore, appraisers should be reminded of these information sources and hopefully “surprises” will be kept at a minimum. The following are policies to be followed by Mn/DOT staff in the appraisal of contaminated property for Mn/DOT acquisition purposes.

### **A. Appraisal of property with petroleum based product contamination.**

In Mn/DOT a large percentage of contaminated properties acquired have been existing on former gas station sites due to their strategic business locations. Clean up of these sites with petroleum contamination historically has been covered under the States Petro Fund Reimbursement Program which covers up to 90% of the site remediation costs.

Therefore, Mn/DOT policy is; parcels that are covered by petro fund clean up reimbursement will be

appraised in the same manner as normal right of way acquisition parcels, free and clear of contamination, as though clean.

Mn/DOT policy will be to recover clean up costs from such available funds, property owners, or responsible parties under State and Federal laws as advised by the Attorney General's Office.

**B. Appraisal of "non-petro" contaminated property where petro fund reimbursement cannot be obtained.**

Mn/DOT policy on appraisal of contaminated property not covered by petro fund reimbursement is to appraise as though contaminated.

Before an appraisal by staff or a fee appraiser is assigned work, the following should first occur:

1. The Office of Environmental Services should be consulted for technical advice/updates as appropriate.
2. The Attorney General's Office should be consulted regarding any special considerations the appraisal/valuation process should address from a legal perspective for just compensation purposes.

Market Value of contaminated properties utilizes the same valuation techniques from the Cost, Market Sales Comparison and Income Approach as recited above in Sections 201 to 202.8 above. Factors appraisers should consider in these approaches to valuing contaminated properties are:

1. Researching similar sales of contaminated properties and use of those sales as a basis for support in estimating the value of the contaminated property.
2. Discounting value based on normal cleanup costs for highest and best use of the subject property.

NOTE: Section 301(3) of the Uniform Act states that changes in value of property caused by the project must be disregarded in the valuation/acquisition of the property.

Remediation costs which would not have been borne by the owner (condemnee) in a normal open market sale should be disregarded by the appraiser in the valuation for just compensation purposes. Cleanup cost would then be the cost the owner would have likely borne under highest and best use theory disregarding the highway project as a factor in those costs.

**APPRAISALS (5-491.200)**  
**APPRAISAL REVIEW (5-491.203)**

**203.1 OBJECTIVE OF REVIEW**

The objective of appraisal review is to make an estimate of market value of the property to be acquired based on an appraisal or appraisals made in accordance with Mn/DOT specifications. The market value so estimated shall be the basis of direct purchase negotiations and, if necessary acquisition by eminent domain proceedings.

Procedures to obtain this objective are covered in greater detail in An *Informational Guide for Appraisal Review* issued by the AASHTO Committee on Right of Way. All reviewing appraisers and administrative personnel should become thoroughly familiar with the contents of that guide.

The reviewer uses a form review with narrative comments as necessary. The reviewer's signed certification of value is set forth on that form.

The reviewer may certify an amount below, between, or above the appraisal estimates. When doing this, the appraiser must thoroughly document the value and be prepared to testify to the appraisal in court.

**203.2 DESIGNATION OF REVIEW APPRAISAL PERSONNEL**

Selection by the Manager of the Valuation Section of review appraisers is dependent on qualifications as recited in Section 201.3. Appraisal supervisors act as review appraisers on certain parcels as described in Section 203.3.

**203.3 RESPONSIBILITY**

- A. An appraisal supervisor is responsible for review, and certification of all appraisals with damages less than \$250,000.
- B. A review appraiser is responsible for review and certification of appraisals of single family residences with damages over \$250,000, and all other parcels with damages over \$250,000.
- C. All appraisals updated or revised for use in eminent domain proceedings, including those under \$250,000 shall be reviewed and certified by review appraisers.
- D. All appraisals with damages over \$500,000 require final approval by the Director, Office of Land Management.
- E. All appraisals will be reviewed by Mn/DOT staff only.

Mn/DOT policy will be to recover clean up costs from such available funds, property owners, or responsible parties under State and Federal laws as advised by the Attorney General's Office.

**B. Appraisal of "non-petro" contaminated property where petro fund reimbursement cannot be obtained.**

Mn/DOT policy on appraisal of contaminated property not covered by petro fund reimbursement is to appraise as though contaminated.

Before an appraisal by staff or a fee appraiser is assigned work, the following should first occur:

1. The Office of Environmental Services should be consulted for technical advice/updates as appropriate.
2. The Attorney General's Office should be consulted regarding any special considerations the appraisal/valuation process should address from a legal perspective for just compensation purposes.

Market Value of contaminated properties utilizes the same valuation techniques from the Cost, Market Sales Comparison and Income Approach as recited above in Sections 201 to 202.8 above. Factors appraisers should consider in these approaches to valuing contaminated properties are:

1. Researching similar sales of contaminated properties and use of those sales as a basis for support in estimating the value of the contaminated property.
2. Discounting value based on normal cleanup costs for highest and best use of the subject property.

NOTE: Section 301(3) of the Uniform Act states that changes in value of property caused by the project must be disregarded in the valuation/acquisition of the property.

Remediation costs which would not have been borne by the owner (condemnee) in a normal open market sale should be disregarded by the appraiser in the valuation for just compensation purposes. Cleanup cost would then be the cost the owner would have likely borne under highest and best use theory disregarding the highway project as a factor in those costs.

#### **203.4 DUTIES**

A. The appraisal supervisor maintains the Mn/DOT's contact with the appraiser in preparation of all appraisals. In this capacity it is the appraisers duty to prepare a check sheet for each appraisal examined and to determine:

1. That the appraisal represents the market value of the property.
2. That the appraisal report is prepared in accordance with Minnesota appraisal specifications and that each applicable approach to value has been used with adequate correlation to arrive at a reasonable estimate of value.
3. That the appraiser has differentiated with proper allowance, all items which are either compensable or noncompensable under Minnesota law, with further differentiation for items not eligible for Federal reimbursement.

4. Whether or not the appraisal reports contain sufficient documentation to substantiate the opinions and conclusions recited.
  5. Action regarding deficiencies:
    - a. Minor errors and omissions: These should be corrected by the appraisal supervisor in both the original and duplicate copy of the appraisal. The appraiser should initial and date the correction and advise the appraiser of the correction made.
    - b. Major errors, omissions, or lack of documentation: The original copy of the appraisal should be returned to the appraiser for correction. The duplicate must be kept by the State.
      - (1) If new sheets are submitted by appraiser, the supervisor should insert them over the corrected sheet in the duplicate appraisal, marking the corrected sheet void.
      - (2) If corrections are made on the appraisal by the appraiser, the supervisor should ink-in corrections in the duplicate appraisal initialing and dating the correction.
  6. Certify damages in accordance with the responsibility recited in Section 203.3, and on the basis of review by the procedures recited in Section 203.5.
  7. If the appraised value is less than \$100.00, determine that the minimum payment of \$100.00 should be certified.
- B. The Review Appraiser shall:
1. Review those parcels submitted in accordance with Sec. 203.3.
  2. Take action in further review as may be necessary
  3. Estimate the market value in accordance with procedure recited in Section 203.5.

### **203.5 REVIEW PROCEDURE BY A REVIEW APPRAISER AND THE APPRAISAL SUPERVISOR ACTING AS A REVIEW APPRAISER**

The review procedure is outlined in Standard 3 of the Uniform Standards of Professional Appraisal Practice as follows:

In reviewing an appraisal and reporting the results of that review, an appraiser must form an opinion as to the adequacy and appropriateness of the report being reviewed and must clearly disclose the nature of the review process undertaken.

Comment: The function of reviewing an appraisal requires the preparation of a separate report or a file memorandum by the appraiser performing the review setting forth the results of the review process. Review appraisers go beyond checking for a level of completeness and consistency in the report under review by providing comment on the content and conclusions of the report. They may or may not have first hand knowledge of the subject property or of data in the report. The COMPETENCY PROVISION applies to the appraiser performing the review as well as the appraiser who prepared the report under review.

Reviewing is a distinctly different function from that addressed in Standards Rule 2-5. To avoid confusion in the marketplace between these two functions, review appraisers should not sign the report under review unless they intend to take the responsibility of a cosigner.

Review appraisers must take appropriate steps to indicate to third parties the precise extent of the review process. A separate report or letter is one method. Another appropriate method is a form or checklist prepared and signed by the appraiser conducting the review and attached to the report under review. It is also possible that a stamped impression on the appraisal report under review, signed or initialed by the reviewing appraiser, may be an appropriate method for separating the review function from the actual signing of the report. To be effective, however, the stamp must briefly indicate the extent of the review process and refer to a file memorandum that clearly outlines the review process conducted.

The review appraiser must exercise extreme care in clearly distinguishing between the review process and the appraisal or consulting processes. Original work by the review appraiser may be governed by Standard 1 or Standard 4 rather than this standard. **A misleading or fraudulent review and/or report violates the ETHICS PROVISION.**

#### 203.6 FIELD INSPECTION OF APPRAISED PROPERTIES

- A. Field reviews are an essential part of the review process, and these should include an examination of the entire project in the field. The appraisal supervisor should analyze the general neighborhood data, the comparables listed in the appraisal reports and those found through other sources, and the appraiser's reasoning used to arrive at his estimate of value.

An inspection should then be made of the subject property, including the interior of the improvements. When an interior inspection is made, it is desirable that such inspection of improvements be made in the presence of the owner or with their knowledge. The date of inspection should be noted and recorded, together with the names of parties present or advised.

The appraisal supervisor should answer any questions that he or she properly can concerning procedure. Value should not be discussed, since this is the function of the purchasing agent who will subsequently contact the owner. A systematic, efficient, and complete inspection of the property may help assure the owner that full and individual consideration is being given. While inspecting the property, the appraisal supervisor may ask the property owner to point out any special items of construction or value that the owner feels should not be overlooked. This may help assure the owner that full consideration has been given to all items that the owner feels are important. In viewing the exterior of the property, the appraisal supervisor should note the trees, shrubs, and other on-site improvements.

- B. By the Reviewing Appraiser

The field inspection procedure by the reviewing appraiser is the same unless the reviewer feels no inspection is necessary.

#### 203.7 FIELD INSPECTION OF COMPARABLES

- A. By the Appraisal Supervisor

After completing the inspection of the property being appraised, the appraisal supervisor should personally field check all applicable comparable sales.

If other sales data are available which the appraisal supervisor feels are pertinent to the subject appraisal, supervisor should also sift and compare them with the subject to the extent deemed necessary.

B. By the Reviewing Appraiser

Field inspection procedure and certification of damage by the reviewing appraiser is the same unless it is felt no inspection is necessary.

### 203.8 REVIEW OF SPECIALTY REPORTS

- A. When a separate appraisal of machinery, equipment, or other speciality items is required, and when the State has retained the specialist, the report will be reviewed by a reviewing appraiser or an appraisal supervisor before its distribution to the fee or staff appraisers. The individual responsible for the review should field inspect the property. If a field inspection is not made, the file shall contain the reasons.
- B. Before distribution to the appraisers, the reviewing appraiser or other specialist shall examine the reports to determine that they:
1. Are complete in accordance with the appraisal specifications, and meet the requirements of the Uniform Standards of Professional Appraisal Practice.
  2. Include consideration of compensable items and do not include compensation for items non-compensable under state law.
- C. In most cases, the fee appraiser will retain a specialist and incorporate the specialist's report in the appraisal report. The review of the package shall be in accordance with the applicable review requirements set forth in this manual.

### 203.9 ADMINISTRATIVE REVIEW

Parcels that have a certified value of over \$500,000 for acquisition and damages are referred to the Director, Office of Land Management for approval after certification by the reviewing appraiser. Where there is a wide divergency in the appraisals submitted for a given parcel, the parcel may be returned to the Valuation Section for an additional appraisal.

### 203.10 APPRAISAL FOR EMINENT DOMAIN PROCEEDINGS

Appraisal supervisors will convene a meeting four to six weeks before the hearing on petition to determine which parcels that have not been acquired need a complete before and after appraisal. The group shall consist of the appropriate purchasing agent, engineer, attorney and appraisal supervisor. The attendees will discuss all outstanding parcels and determine which are likely to settle and be acquired and which are not. The appraisal supervisor will be responsible for assigning requests for updated appraisal reports on those parcels which are not likely to settle. **All parcels placed into an eminent domain action will require a complete before and after appraisal except in cases where there is an uncontested value placed on the taking.**

## ACQUISITION (5-491.300)

- 5-491.301 DIRECT PURCHASE - POLICY
  - .301.1 Introduction
  - .301.2 Direct Purchase (General)
  - .301.3 Purchasing Qualifications
  - .301.4 Certification of Disinterest
  - .301.5 Purchase Offer
  - .301.6 Accelerated Process
  - .301.7 Summary Statement
  - .301.8 Offers with Improvements
  - .301.9 Offer Follow-up
  - .301.10 Possession
  - .301.11 Owner Retention
  - .301.12 Purchase Documents
  - .301.13 Acceptance Period
  - .301.14 Negotiator Activity
  - .301.15 Tax and Assessment Information
  - .301.16 Administrative Settlement
  - .301.17 Uneconomic Remnants
  - .301.18 Incidental Expenses
  - .301.19 Real Estate Tax Policy
  - .301.20 Appeals for Incidental and Litigation Expenses
  - .301.21 Income Reportable to the IRS
  - .301.22 Referral for Condemnation
  - .301.23 Title Deficiencies
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- 5-491.302 DIRECT PURCHASE - NEGOTIATION PROCEDURES
  - .302.1 Assignment
  - .302.2 Submittal of Offer
  - .302.3 Offer Unacceptable to Owner
  - .302.4 Referral for Condemnation
  - .302.5 Offer Acceptable to Owner
  
- 5-491.303 DIRECT PURCHASE - CLOSING AND PAYMENT PROCEDURES
  - .303.1 Closing Review
  - .303.2 Acceptance
  - .303.3 Title Review
  - .303.4 Recording
  - .303.5 Payment
  - .303.6 Finalization
  
- 5-491.304 Open
  
- 5.491.305 EMINENT DOMAIN - CONDEMNATION
  - .305.1 Policy
  - .305.2 Procedure - Hearing and Viewings
  - .305.3 Procedure - Report of Commissioners
  - .305.4 Procedural Requirements After Filing of Report of Commissioners
  - .305.5 Procedure - Settlement of Appeals
  - .305.6 Procedure - Trials

5-491.306	PROCEDURES FOR CONTROL OF JUNK YARDS SANITARY LANDFILLS AND GARBAGE DUMPS
.306.1	Policy and Definitions
.306.2	Zoning, Policies and Procedures
.306.3	Determination of Method of Control
.306.4	Implementation of Control; Screening
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**ACQUISITION (5-491.300)**  
**DIRECT PURCHASE POLICY (5-491.301)**

**301.1 INTRODUCTION**

Fee ownership or ownership rights in real estate may be acquired for highway purposes by gift, Direct Purchase or eminent domain. An acquisition by gift is a donation of real estate from a property owner to the State. Direct Purchase is the acquisition of real estate or a property right through negotiations with the property owner. Eminent domain is the acquisition of real estate or a property right through court proceedings. Ordinarily, Direct Purchase is preferred over eminent domain for the following reasons:

1. Direct Purchase is similar to a normal real estate transaction. It is a voluntary sale on the part of both seller and buyer (even though the seller is under the threat of condemnation).
2. It avoids litigation and thus relieves congestion in the courts.
3. It also generally saves the taxpayers money while expediting the acquisition process.

The policies and procedures described in this section are intended to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its amendments, 49 CFR Part 24, 24.102.

**301.2 DIRECT PURCHASE (General)**

Direct Purchase of property is authorized in Minnesota Statute §161.20, Subdivision 2. Direct Purchase offers shall be presented to the owners of all parcels, except when the owner cannot be located. Direct Purchase shall not be used in acquiring land or any interest in land in which an employee of the Department of Transportation has an interest, unless such a purchase has specific approval by the Attorney General. Direct Purchase offers must be made before an eminent domain proceeding is instituted to acquire a parcel.

Direct Purchase offers are made by employees under the supervision of the Direct Purchase, Office of Land Management Supervisor or by Metro Division/District Right of Way employees under the supervision of the Metro Division/District Right of Way Supervisor. Employees of the Office of Freight, Railroads and Waterway and Utilities Agreement Unit may purchase properties owned by railway and utility companies, respectively. In certain instances, and at the discretion of the Director, Office of Land Management, or his designee, purchasing agents may be hired on a fee basis to make offers and acquire property for public use. Acquisition of land owned by the Federal Government or state departments may be made by employees of the Legal and Real Estate Conveyance Unit. Parcels with damages of \$10,000 or less are generally considered to be a "Minimum Damage Acquisition" (MDA). The same Mn/DOT Real Estate Representative with the appropriate appraisal license, may estimate value and then negotiate purchase of parcels with a total damage estimate of \$10,000 or less. Purchase of parcels over \$10,000 may not be negotiated by the person estimating the value. All non-MDA appraisals must be reviewed and certified prior to the initiation of negotiations.

**301.3 PURCHASING QUALIFICATIONS**

Individuals performing Direct Purchase work shall have attained a classification of at least Real Estate Representative. The Direct Purchase Real Estate Representative should be commissioned as a Notary Public and thus authorized by law to take acknowledgments of signatures on instruments of conveyance.

### 301.4 CERTIFICATION OF DISINTEREST:

Prior to the first contact with the property owner, the purchasing Real Estate Representative shall certify that the property is to be secured for a public use and that the purchasing Real Estate Representative has no direct or indirect past, present or contemplated future personal interest in the property and will not receive any benefit from the acquisition of such property.

### 301.5 PURCHASE OFFER

Direct Purchase begins by submitting in writing to the owner or the owner's authorized representative an offer in the amount of the state's certified appraisal (see Section 5-491.200 appraisals). At the time the offer is submitted to the owner (or the owner's representative), the purchasing Real Estate Representative will advise this person of general relocation information and that a Relocation Officer may be assigned. A brochure explaining the relocation assistance program is given to any property owner who will be displaced by the highway improvement/construction. Typically, the amount of a replacement housing supplement may be submitted in writing to the eligible owner-occupant at this time. In addition, a brochure entitled "Guide For Property Owners" explaining the state's procedures in land acquisition, is given to all property owners. The purchasing Real Estate Representative secures complete information concerning occupants of the property and other pertinent data, which information is forwarded in writing to the Relocation Manager. When the owner is a resident of the subject property or resides within the state, such offer will ordinarily be delivered in person by a purchasing Real Estate Representative. In instances where: distance makes a personal call on the owner impractical; the acquisition is minor and non-controversial; the consideration is modest; or the acquisition requires the "Accelerated Process", a written offer may be mailed to the owner.

### 301.6 ACCELERATED PROCESS

On projects or parcels where the acquisition process can be accelerated and a considerable savings in manpower and travel cost can be realized, the written offer method may be utilized. If the written offer or the accelerated process of acquisition is used in the initial phase of negotiations, the written offer must include a summary statement as set forth in 301.7 below. The "Offer to Sell and Memorandum of Conditions", instrument of conveyance and property plat or sketch showing the acquisition should be submitted with the written offer. **The accelerated process may not be utilized on acquisitions where relocation is involved.**

### 301.7 SUMMARY STATEMENT

At the time an offer is made to purchase real property, the purchasing Real Estate Representative shall provide the owner with a written statement which includes the following:

1. An identification of the real property and the particular interest being acquired.
2. An identification of buildings, structures and other improvements, including fixtures, removable building equipment and any trade fixtures which are considered to be part of the real property for which the offer of just compensation is made.
3. An identification of real property improvements, including fixtures not owned by the owner of the land.
4. An identification of the types of personal property located on the premises.

5. A declaration that the state's determination of just compensation:
  - a. Is the appraised fair market value of or total damage estimate to the property.
  - b. Disregards any decrease or increase in the "before" value caused by the project for which the property is being acquired.
  - c. In the case of separately-held interests in the real property, includes an apportionment of the total just compensation for each of these interests.
  - d. Includes a statement that separates the monetary amount for right of way being acquired and the amount of damages to the remaining property.

### 301.8 OFFERS WITH IMPROVEMENTS

When improvements are being acquired:

1. Said improvements should be insured by the owners against loss by fire and windstorm in an amount not less than the salvage value of the improvements and machinery and fixtures contained therein during the entire term of owner occupancy. Such policy or policies of insurance shall be endorsed to show the state's interest. As the salvage value of the improvements is usually considerably less than the market value, insurance companies are frequently hesitant to issue insurance on the lesser amount. The property owner is, therefore, generally asked to continue the present insurance and to have the policy or policies endorsed to show the state's interest.
2. The owner is informed the state's offer was made on the premise that no building, including electrical, heating and plumbing fixtures or other non-personal property items, would be removed from the premises by the owners or renters.
3. The owners shall permit the state's prospective bidders for the purchase/demolition of the improvements on the property to enter for inspection purposes during the last 10 days of the owners' possession of the property.

### 301.9 OFFER FOLLOW-UP

The purchasing Real Estate Representative should follow up the original offer to the extent appropriate based on calls or meetings with the owner or the owner's representative.

The state's offer is typically not subject to adjustment, however, adjustments may be necessary in cases where a compensable item has been overlooked in the appraisal or where it is administratively determined that an adjustment is in the best interest of the State. An appraisal may require being updated when a time lag may change the fair market value, whereupon a revised offer may be submitted to the owner. Revised offers may be submitted without the approval of the Attorney General's office prior to the seating of the court-appointed commissioners in an eminent domain proceeding. Submittal of revised offers after the appointment of the commissioners by the court is at the discretion of the Attorney General.

The property owner shall be given a reasonable length of time (usually 30 days) to consider the Direct Purchase offer. The offer may be accepted at any time provided that recording of the instrument of conveyance and subsequent payment can be completed prior to the award of commissioners in a regular eminent domain proceeding or prior to the title and possession date in a "Quick Take" eminent domain action.

The purchasing Real Estate Representative is permitted to divulge certain information that is in the parcel file. Freedom of Information Acts at both federal and state levels, together with follow-up interpretations and directives, serve as guidelines in this area. The Minnesota Attorney General's Office has determined that **comparable sales information is confidential and cannot be released without the specific authorization of the Director, Office of Land Management, or Assistant Director**. Care must be taken

in making or permitting others to make photo copies of information in office files. **Any items copied should have the signature deleted.** If there is any question as to what information may be divulged, the Real Estate Representative should discuss it with their Supervisor.

### 301.10 POSSESSION

The title or other interests being acquired by the State via Direct Purchase of vacant land shall pass to the State as of the date the Offer to Sell and Memorandum of Conditions is accepted in writing by the State or as specified in the Offer to Sell. The passing of such title will always be subject to the conditions contained in the Offer to Sell, particularly the condition which deals with the recordability of the instrument of conveyance. Notwithstanding the passing of title, **no owner will be required to vacate the property prior to receiving payment from the State.**

**The right of possession of improved properties acquired by the State through Direct Purchase shall not be more than 120 days after the date of acceptance of the Offer to Sell.** Any further possession by the owner must be by means of a lease with the State. The owner may release possession of the property to the State prior to the end of the agreed-upon period of possession, if mutually desired. **All occupants of improvements being acquired shall be provided at least 90 days advance notice in writing of the need to vacate the property.**

### 301.11 OWNER RETENTION

The owner may elect to retain and remove any or all of the improvements located on the property being conveyed, in which case the purchase price will be in the amount of the certified appraisal less the state's salvage value of any improvements retained. The items of property being retained by the owner should be noted in the purchase agreement, even if the salvage value of such items is zero.

**The owner must be informed that said owner must make the decision to retain any/all of the improvements or machinery or fixtures at the time of the sale. After the sale is completed, the improvements become the property of the State.**

If the owners elect to retain and remove any structures from the right of way being acquired, they are informed of their responsibility to obtain the necessary approval (moving and zoning permits, etc.) from the municipality and road authority in which the improvement is located and to where said improvement will be moved.

When the owner retains and removes major improvements from the premises being acquired, said owner is required to furnish a performance bond, or in lieu thereof, a certified check payable to the Minnesota State Treasurer in the amount of the state's estimated cost of wrecking the improvement, as shown on the salvage appraisal, or a reasonable amount to be set by administrative determination. When an inspection shows that the removal has been completed to the state's satisfaction, the bond or check is returned to the owner. The performance bond or certified check is forwarded through the Property Management Unit to the Financial Management Section for safekeeping and then returned to the owner when appropriate.

### 301.12 PURCHASE DOCUMENTS

Purchases of property for Mn/DOT must be initiated by having the owner execute an Offer to Sell and Memorandum of Conditions, and closed with the appropriate instrument of conveyance, except in cases where:

1. The approval of Probate Court is necessary to effect a transfer of the property to the State, in which case an option may be used.
2. The acquisition is highly involved, with special problems, and it is deemed in the best interest of the State to secure an option or agreement subject to acceptance by the State, with subsequent execution of the instrument of conveyance.
3. The terms and conditions relating to right of way acquisition are part of agreements involving other matters in addition to right of way, such as agreements with other public agencies, railroad, mining, public utility companies, etc.
4. A lesser estate is being acquired, such as easements for channel changes, offtake ditches, flowage, extinguishment of access, temporary easements, etc.

### **301.13 ACCEPTANCE PERIOD**

The period of time for acceptance by the State is 90 days, except where circumstances warrant either a shorter or longer term. Should such term expire before the acceptance is made, an extension must be secured.

### **301.14 NEGOTIATOR ACTIVITY**

Real Estate Representatives will make notes on Purchasing Representative's Report Form on the inside parcel file cover to indicate date, persons present at time of offer and place/results of visit. Pertinent remarks, including owner's reaction to the state's offer, will be made for first and all subsequent visits as well as for all telephone conversations or written communications, with all remarks initialed. Written communication will be placed in file, as well as copies of any written responses.

Real Estate Representative will make appropriate notations on Purchasing Representative's Status Report and will submit completed Notice of Direct Purchase Offer to the Relocation Manager immediately after information is secured.

### **301.15 TAX AND ASSESSMENT INFORMATION**

The purchasing Real Estate Representative will secure all pertinent tax and assessment information and will note same on the Tax and Assessment Data Form.

### **301.16 ADMINISTRATIVE SETTLEMENT**

Based on information in the state's or the owner's appraisal or from other evidence of value, the experience of condemnation awards/settlements and jury verdicts in the affected county, the Direct Purchase Supervisor or Metro Division/District Right of Way Supervisor may recommend an administrative settlement to acquire by Direct Purchase for an amount or for conditions other than those under which the original offer was tendered.

In those instances where circumstances clearly indicate that, in his/her opinion, such a determination may be in the best interests of the State, the Supervisor initiates a memorandum addressed to the Director, Office of Land Management, setting forth the various circumstances involved, along with the settlement recommendation. The justification and supporting financial considerations should clearly be spelled out in this memorandum. Furthermore, the administrative settlement memorandum should separate the value of the real estate from the damages. This is important because the Department of Finance reports all real estate income to the IRS and does not include any of the damages attributable to the remaining property. In most instances, this memorandum will be prepared by the Direct Purchase Real Estate Representative.

When this report is not written by a Supervisor, an endorsement line should be provided at the end of the memorandum for signature by the appropriate Division/District Supervisor cited above or by the Direct Purchase Supervisor when prepared in the Central Office. Finally, an appropriate signature and date block needs to be provided for the approving authority (Director or, in his absence, the Assistant Director). If either the Director, Office of Land Management, or Assistant Director, agrees with the Supervisor's recommendations, concurrence is indicated by signing this memorandum.

### 301.17 UNECONOMIC REMNANTS

If a partial acquisition would leave the owner with an uneconomic remnant, the State shall offer to acquire that remnant as follows:

1. At the time the parcel file is assigned to the Direct Purchase Unit, the Direct Purchase Supervisor or persons designated, shall review the parcel to determine if there is a remaining piece of land after a partial acquisition that is of little or no utility value or benefit to the landowner. The parcel shall also be reviewed to determine if there are statements in the appraisal indicating that the remnant's highest and best use has changed to an appreciable degree or if the remnant is a severed piece of land that does not contribute materially to the utility or value of the remaining property.
2. **The purchasing Real Estate Representative shall inform the landowner at the time the offer to purchase is submitted that the parcel contains what is considered to be an uneconomic remnant.** The agent shall also inform the landowner that he/she may request that the remnant be purchased by the State.
3. The landowner's request to have the State purchase the uneconomic remnant shall be made in writing to the Director, Office of Land Management, and the acquisition request will be processed in accordance with excess right of way acquisition procedures.
4. Purchasing Real Estate Representatives shall indicate in their reports that the landowner was made aware of the uneconomic remnant provision and also indicate the landowner's response thereto.
5. Uneconomic remnants properties acquired shall be disposed of in the same manner as to other excess right of way property.

### 301.18 INCIDENTAL EXPENSES

Incidental Expense Reimbursement Claim Forms are submitted to the property owner or his/her representative at the time of purchase. Expenses for which reimbursement may be considered are:

1. Service fee charged by mortgagee
2. Prepayment penalty of mortgage
3. Abstract costs for state's caused entries only
4. Probate Court costs (attorney fees and court cost)

After the signed claim form is received from the property owner or his/her representative, the purchasing Real Estate Representative will review and recommend approval and will send the Incidental Expense Claim Form to the Relocation Manager for final approval and payment.

A person may file a written appeal with the acquiring agency in any case in which said person believes that the agency has failed to properly determine that person's eligibility or to determine the amount of a payment required for those expenses incidental to transferring title to the agency or for certain litigation expenses. All written appeals, regardless of form, shall be reviewed by the acquiring agency.

The appealable items are shown in Sections 5-491.408 and 5-491.410.

### **301.19 REAL ESTATE TAX POLICY**

Real estate taxes payable in a given year are for use of the land in the preceding year. Therefore, taxes payable in the year of transfer, which an owner must pay in transferring title to the State, will not be reimbursed.

Under Minnesota Statute §272.02, Subdivision 4(b): if title or possession vests in the acquiring authority on July 1 or after of the year of transfer, the acquiring authority must make provision for the payment of property taxes for the succeeding year. Normally, the following year's property taxes are paid by the State and, therefore, there will be no reimbursement to the property owner. However, if the owner were to pay the real estate taxes for the following year, the owner would be reimbursed for that portion of the taxes attributable to the acquisition.

### **301.20 APPEALS FOR INCIDENTAL AND LITIGATION EXPENSES**

A person may file a written appeal with the acquiring agency, if the person believes that the agency has failed to properly determine the person's eligibility for, or the amount of, a payment required for those expenses incidental to transfer of title to the agency or for certain litigation expenses. All written appeals, regardless of form, shall be considered by the acquiring agency.

The appealable items are shown at Section 5-491.410 and the appeal process at Section 5-491.408 in this manual.

### **301.21 INCOME REPORTABLE TO THE IRS**

Following acquisition, it may be necessary for the Minnesota Department of Finance to send an IRS Form 1099 to property owners. The 1099 is required for reportable income in the amounts of \$600.00 or more. Those reportable amounts paid to property owners are made available to the Department of Finance by the Closing Group via the Financial Management Section. Where multiple owners are involved in a parcel, the 1099 should indicate the monies allocated to each owner based on payees' advice. This information can be found in the parcel file under "Allocation of Gross Proceeds".

Income is reported on the following IRS forms:

- a. Form 1099-S is used to indicate amounts paid for real property acquired (fee or permanent easements). This would also include the value of improvements located on fee and permanent easement areas.
- b. Form 1099-Misc. is used to indicate rental payments. If any payments made to property owners are considered "rents", they must be reported in box 1 of this form.

Amounts paid for all other items such as severance damages, crop loss, cost-to-cure, most temporary easements, windbreak damages, extinguishment of access, etc., are considered "Damages" for which preparation of the 1099 is not required.

### **301.22 REFERRAL FOR CONDEMNATION**

The Purchasing Group Leader, at the request of the Project Coordination and Finance Unit, returns the parcel file(s) to this unit for further processing and then enters in ROWIS the date parcel file is returned.

### **301.23 TITLE DEFICIENCIES**

Where a deficient title exists due to a break in the chain of title, the purchasing agent must make a conscious effort to secure all relevant information pertaining to that title. That title information is necessary to make an intelligent assessment of the degree of risk the title defect would pose to the Department. In cases where the risk would be too great, the only remaining alternative for the Department is acquisition through condemnation. Nonetheless, all title defects that involve risk-taking will be judged on a parcel-by-parcel basis, always in consultation with the Attorney General's Office.

In situations where a fee owner is deceased, the purchasing agent must get all pertinent information involving the decedent's estate. If no probate proceedings for the decedent's estate have begun, the purchasing agent needs to first check for the existence of a will. The will determines the disposition of the real property and makes the risk minimal for a conveyance from the devisee. If there is no will, the purchasing agent must find all of the heirs to the estate. Here again, if there is certainty as to the heirs, a conveyance from the heirs to the State would pose little risk. In many instances, especially in minor/low-value parcels, these transfers can be made without forcing the heirs to incur large probate expenses.

### **301.24 MORTGAGE ENCUMBRANCES**

In low risk situations, we will forego requesting the partial release of mortgage covering minor/low value parcels, especially in dealing with out-of-state parties and mortgages. However, it is still good business to secure the mortgage release if it is readily available.

**ACQUISITION (5-491.300)**  
**DIRECT PURCHASE - NEGOTIATION PROCEDURES (5-491.302)**

**302.1 ASSIGNMENT****Project Coordination and Finance Unit**

1. Submits parcel file containing the certified appraisal, salvage appraisal, certificate of title, field title report, "Offer to Sell and Memorandum of Conditions", instruments of conveyance containing legal descriptions of lands or rights to be acquired, and names and addresses of grantors, together with the transmittal for direct purchase to the Direct Purchase Supervisor.

**Direct Purchase Supervisor**

2. Examines parcel file for approvals, completeness, accuracy and also for an unusual ownership or other circumstances existing to insure that basis of appraisal is consistent with rights to be acquired and that no special handling is required. If the file is correct and complete:
  - (a) and owner is not eligible for supplemental housing payment, the parcel is assigned to appropriate Group Leader.
  - (b-1) and owner is eligible for supplemental housing payment, file is forwarded to Replacement Housing Unit for determination of price differential payment owner may be entitled to receive.

**Replacement Housing Supervisor**

- (b-2) Prepares price differential determination, places in file and returns same to Direct Purchase Supervisor.

**Purchasing Group Leader**

3. When Step 2 has been satisfactorily fulfilled, the following listed instruments and forms are prepared and placed in the parcel file:
  - a. Purchasing Representative's Report
  - b. Incidental Expense Claim Form, if applicable
  - c. Applicable offer letter with Director or Assistant Director's signature
  - d. Claim Form for Appraisal Fee Reimbursement
  - e. Notification of Offer form to Relocation Manager
  - f. Replacement Housing Supplement letter, if applicable
  - g. Explanatory booklet - "Guide for Property Owners"
  - h. Explanatory booklet titled "Relocation--Your Rights and Benefits", if applicable
  - i. IRS W-9 Form, if applicable
  - j. Well Certificate, if applicable
  - k. Right of Way Plat (2 copies), if applicable
  - l. Taxes and Assessment Data Form
4. Notes receipt of file on "Project Status Report". Notes current project program information on outside file cover and assigns file with right of way print to purchasing Real Estate Representative.

When making the assignment, the Purchasing Group Leader assists the purchasing Real Estate Representative in familiarizing him/her with all factors involved in the acquisition. When property owners reside out-of-state or personal contact is impracticable, an appropriate offer is prepared and mailed to the owner.

### **Closing Group Clerk**

5. Enters into ROWIS the date of assignment of parcel and identity of purchasing Real Estate Representative to whom parcel is assigned.

### **Purchasing Real Estate Representative**

6. Indicates receipt of file on purchasing Real Estate Representative's status report. Reviews parcel file in preparation for presentation of offer to owner. Inspects property where possible.
7. Signs and dates a statement prior to first contact with owner that the parcel is to be secured for use in connection with a federal/state project and there is no direct or indirect past, present or contemplated future personal interest in the parcel or in any benefit from the acquisition of such property.

## **302.2 SUBMITTAL OF OFFER**

### **Purchasing Real Estate Representative**

1. Submits offer (including replacement housing supplement offer, if owner is eligible) to property owner living within the state or to owner's agent. When offer is submitted in person, purchasing Real Estate Representative secures owner's written acknowledgment of replacement housing supplement letter (where owner is eligible). Purchasing Real Estate Representative will be responsible for providing owner with comprehensive outline of purpose of acquisition, identification of the property, a declaration of the state's determination of just compensation, the alternative to Direct Purchase, the current programming information, and leave with the owner a portfolio containing the following items:
  - a. Original offer letter containing basis of offer.
  - b. Original of supplemental housing offer letter, if owner is occupant.
  - c. Informational pamphlet entitled "Guide for Property Owners".
  - d. Relocation assistance brochure, if owner is occupant.
  - e. Claim form for appraisal fee reimbursement.
  - f. Incidental Expense Claim Form
  - g. Property sketch, right of way print and/or right of way plat.
2. Regardless of owner's reaction to offer, the purchasing Real Estate Representative will also be required to secure the following items of information from the owner or his/her representative:
  - a. An updated field title report that states all changes that are pertinent to the ownership of or interest in the property and state "Continued". If no changes have occurred, the purchasing Real Estate Representative shall state "No changes". The updated field title report must be signed or

initialed and dated by the purchasing Real Estate Representative. **If the original report was incomplete, the purchasing Real Estate Representative is responsible to complete the report.**

- b. A memorandum to the Relocation Manager stating parcel identification, date offer made, occupants, length of occupancy and other information requested on the form after the offer is made and this information secured.
- c. IRS W-9 form, if applicable.

### 302.3 OFFER UNACCEPTABLE TO OWNER

#### Purchasing Real Estate Representative

1. When the state's offer is unacceptable to the owner and the owner submits a proposal under different circumstances than the state's offer, said proposal should be reviewed and considered for recommendations for an administrative settlement. **The owner should be informed by the Purchasing Agent that said proposal will not be final until it has the ultimate approval of the Director, Office of Land Management or the Assistant Director.** If for any reason, Direct Purchase cannot be done, the file is returned to Purchasing Group Leader.

#### Purchasing Group Leader

2. **The Purchasing Group Leader will examine each parcel file to insure that every reasonable effort has been made to acquire by Direct Purchase.** When circumstances indicate that a reasonable counter proposal has been made by the owner, such proposal is brought to the attention of the Direct Purchase Supervisor for further consideration. If an owner refuses the state's offer based on an appraisal the owner obtained, the agent will try to secure a copy of the appraisal for the state's review. If a copy of the appraisal cannot be obtained, the purchasing Real Estate Representative should secure as much information as possible from the report along with a letter from the property owner or his/her agent stating the differences and the basis for refusal of the offer. The purchasing Real Estate Representative shall present this refusal and subsequent information to the Direct Purchase Supervisor to explore possible solutions to acquire the subject parcel.

#### Direct Purchase Supervisor

3. Based on information in the state's or owner's appraisal or other evidence of value, the experience of condemnation awards or settlements/ jury verdicts in the affected county, the Supervisor may recommend administrative determination to acquire by Direct Purchase for an amount or conditions other than those under which the original offer was tendered.
4. In those instances where circumstances clearly indicate that, in his or her opinion an adjustment is necessary, an administrative settlement recommendation is made to the Director, Office of Right of Land Management, and/or the Assistant Director. The case is then discussed with them and, if they concur in the Supervisor's recommendations, they sign the memorandum.

If the administrative settlement is not approved, the Supervisor returns the parcel file to the Purchasing Group Leader for further disposition.

If the administrative settlement is approved, the Purchasing Group Leader and the purchasing Real Estate Representatives are informed and given appropriate instructions.

#### Purchasing Real Estate Representative

5. Submits the agreed upon administrative settlement to the property owner.

### 302.4 REFERRAL FOR CONDEMNATION

#### Purchasing Group Leader

1. Prepares all parcels not yet purchased and returns them to the Project Coordination and Finance Unit for acquisition by eminent domain.

### 302.5 OFFER ACCEPTABLE TO OWNER

#### Purchasing Real Estate Representative

1. When offer is acceptable to owner, purchasing Real Estate Representative oversees the execution of instruments appropriate to the acquisition. The Representative is responsible for securing the needed instruments and documents incidental to acquisition, including quit claim deeds, mortgage releases, sign lease termination instruments, disclaimers of interest instruments, and tax and assessments information, statements and/or receipts. **Owner is informed of all foreseeable delays which are likely to be encountered in closing, recording and payment.**
2. Incidental expense claim forms are submitted to the property owner or his/her agent at the time of purchase.
3. When all signatures have been secured and negotiation is considered ready for acceptance, purchasing Real Estate Representative signs affidavit stating no coercion was used in securing signatures, then prepares purchase report. File is delivered to appropriate Purchasing Group Leader for review.

#### Purchasing Group Leader

4. Examines file and conveyance instruments to insure conformance to statutes and Office of Land Management Policies and Procedures. When there is any doubt as to completeness or correctness of instruments, consults with the appropriate party (purchasing Real Estate Representative, Attorney, etc.). When satisfied that purchase is complete, file is transmitted to Closing Group Leader to initiate the closing process.

**ACQUISITION (5-491.300)**  
**DIRECT PURCHASE - CLOSING AND PAYMENT PROCEDURES (5-491.303)**

**303.1 CLOSING REVIEW****Closing Group Leader**

1. Examines the file and instruments of conveyance to insure that all is in order to initiate the closing process. If the parcel file lacks a critical component/ key ingredient and is not ready for closing, returns parcel file to the Purchasing Group Leader or the purchasing Real Estate Representative. When satisfied that the purchase can be made, and the file is complete, the closing process or "final step" is initiated.

**303.2 ACCEPTANCE****Closing Group Leader**

1. Examines the instruments of conveyance, as well as other relevant file contents, to insure legal and procedural requirements have been fulfilled; supervises the preparation of the acceptance letter; and insures that all appropriate entries are entered into ROWIS. Delivers the parcel file with instruments and acceptance letter to the Direct Purchase Supervisor.

**Direct Purchase Supervisor**

2. Examines file for propriety of instruments and procedures. If deficiencies or discrepancies exist, the parcel file is returned to Purchasing Group Leader for appropriate action. If acceptable, recommends approval of "Offer to Sell" and/or other appropriate instruments and forwards file to Director or Assistant Director.

**Director or Assistant Director**

3. Approves purchase by signing the acceptance letter and all necessary instruments. Returns file to Closing Group Leader.

**Closing Group Leader**

4. When file containing all necessary and appropriate approvals is returned to Closing Group, the acceptance letter is sent out via certified mail. Transmittal memo to Attorney General is prepared for approval of title and recording of deeds. Parcel is delivered to Assistant Attorney General for approval of conveyance instruments as to form and execution.
5. A copy of the executed instrument of conveyance is forwarded, along with a copy of acceptance letter, to Right of Way Mapping Unit for examination as to correctness of land description as it appears on instrument. Mapping Unit checks description and, if all is correct, initials instrument and returns same to Closing Group appropriately marked to indicate action taken. If description is erroneous, instrument is returned to Closing Group for appropriate correction.

**Closing Group Clerk**

6. Enters acceptance data into ROWIS records. Where consideration differs from certified appraisal, data is entered to reflect actual purchase price and reason(s) for deviation from certified appraisal.

Reasons are confined to:

- a. Building retained by owner
  - b. Administrative settlement
  - c. Signboards
  - d. Excess property acquired (includes uneconomic remnants)
  - e. Agreement
7. Requests from the Department of Finance vendor number for each payee.
  8. Requests appropriate fees for deed tax, well certificate, conservation fee, etc., as necessary, for recording of instruments.
  9. Enters mapping information in ROWIS.
  10. Distributes copies of the acceptance letter and the Direct Purchase memo.

### **303.3 TITLE REVIEW**

#### **Assistant Attorney General**

1. Examines title to property and instruments of conveyance as to form and execution. Where a discrepancy exists, file is returned to Closing Group Leader for appropriate action.

### **303.4 RECORDING**

#### **Attorney General or Legal and Real Estate Conveyance Unit**

1. Following approval as to form and execution, the instruments are given to a member of the Attorney General's Staff or a member of the Land Management Legal staff, together with all the necessary payments, to insure recording. The certificate of title is continued and the instruments are recorded and returned to Closing Group Leader.

#### **Closing Group Leader**

2. Prepares, but does not date, remittance advice and closing statement to each party to be named on state's warrant and delivers same with parcel file to the Financial Management Section for payments. Note: This action follows approval by the appropriate party: Director of the Office of Land Management or Assistant Director, Direct Purchase Supervisor, Assistant Direct Purchase Supervisor or Closing Group Leader.

#### **Closing Group Clerk**

3. Prepares all invoices for expenses connected with the recording process and submits same to Direct Purchase Supervisor for approval.

**Direct Purchase Supervisor**

4. Reviews all invoices and, if satisfactory, approves same and returns them to the Closing Group Clerk.

**Closing Group Clerk**

5. Delivers invoices to Financial Management Section for payment.

**303.5 PAYMENT****Financial Management Section**

1. Verifies that funds are available and determines the payable fiscal year(s) and then enters the payment information into MAPS.
2. Determines the payment date which triggers automatic mailing of state's warrant.
3. Enters payment date in ROWIS.
4. Enters information for Form 1099 for parties receiving all or a portion of the income from the real property transaction.
5. Returns file to Closing Group Leader.

**303.6 FINALIZATION****Closing Group Leader**

1. Verifies and ensures that all encumbrance(s) are resolved and that the purchasing transaction is complete.

**Closing Group Clerk**

2. Mails copy of closing statement to property owner.
3. Sends "Customer Feedback Survey" form to owner.
4. Sends original recorded Warranty Deed and Owner's Duplicate Certificate of Title to Record Archives, Department of Finance.
5. Verifies that all purchase data is entered into ROWIS records.

**Closing Group Leader**

6. Examines file for completeness and removes all extraneous material from file.

**Closing Group Clerk**

7. Sends parcel file to Records Center and enters date sent in ROWIS.

**ACQUISITION (5-491.300)****CONTROL OF OUTDOOR ADVERTISING DEVICES (5-491.304)****304.1 LEGAL****A. Congressional Enactment and Authorization**

With the enactment of Public Law 89-285, by the Congress of the United States, dated October 23, 1965, cited as the "Highway Beautification Act of 1965", under Title I of said law, it was declared; that the erection and maintenance of outdoor advertising signs, displays and devices in areas along the Federal-aid Interstate and Primary systems of trunk highways, should be controlled in order to protect the public investment in said highways, to promote the safety and recreational value of public travel and to preserve natural beauty. This law has been subsequently codified as follows: Title 23, United States Code, Section 131 (23, USC, 131).

**B. Inventory of Advertising Devices**

In accordance with the Federal Highway Administration (FHWA) Instructional Memorandum 50-1-66, dated January 7, 1966, an inventory was conducted, compiling and classifying all of the signs along the Federal-aid Interstate and Primary Systems of trunk highways, to carry out the provisions of 23, USC, 131. The FHWA authorization coding for this project was CAF 000B(1).

**C. Implementation by Minnesota Legislation**

To enable the State of Minnesota to implement and carryout the provisions of 23, USC, 131, the Legislature enacted Laws of Minnesota 1971, Chapter 883 entitled "Advertising Devices", which has been subsequently codified as: Minnesota Statutes, Chapter 173.

**D. Joint Federal-State Agreement**

To carry out National policy relative to the control of outdoor advertising in areas along the Federal-aid Interstate and Primary Systems of trunk highways, an agreement was consummated between the United States of America, represented by its Secretary of Transportation, through the Federal Highway Administrator, and the State of Minnesota, represented by its Department of Transportation, through the Commissioner of Transportation. The agreement was entered into on November 18, 1971.

**E. Public Hearing in Minnesota**

To carry out the mandate of the Legislature prescribed in Minn. Stat., Chapt. 173, the Commissioner of Transportation held a public hearing concerning the establishment of rules and regulations governing control of advertising devices on lands along the Federal-aid Interstate and Primary systems of trunk highways within the State of Minnesota. The hearing was conducted pursuant to Minn. Stat., Sec. 15.014, Subd. 4, on December 20, 1971.

**F. Adoption of Rules and Regulations in Minnesota**

The rules and regulations for the placement of advertising devices on lands along Federal-aid Interstate and Primary Systems in the State of Minnesota were adopted on March 23 1972 by the Commissioner of Transportation and the Commissioner of Administration.

## G. Federal and State References

### 1. Federal

- a. Public Law 89-285, cited as the "Highway Beautification Act of 1965".
- b. Federal Highway Administration, FHPM V7C2S12 entitled "Outdoor Advertising".
- c. Title 23, United States Code, Section 131 and 319 (23, USC, 131.319).
- d. Title 23, Code of Federal Regulations, Section 21 (23 CFR, 21).
- e. Public Law 91-646, cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".
- f. Federal Highway Administration FHPM V7C5S3, Relocation Assistance - Moving Payments.
- g. Federal Highway Administration FHPM V7C6S2, Outdoor Advertising Control (Enforcement and Regulation).

### 2. State

Minnesota Statutes Chapter 173, cited as the "Minnesota Outdoor Advertising Control Act".

## 304.2 SCOPE

### A. Sign Permit Program

The program of sign permitting is under the jurisdiction of the District Engineers.

### B. Acquisition Project Priorities and Programming

The selection of programming of sign removal projects and the development of programs for Federal authorization and participation is under the jurisdiction of the Office of Right of Way.

### C. Valuation and Acquisition

The valuation of advertising devices and the acquisition of the devices is under the jurisdiction of the Office of Right of Way.

### D. Removal Programming

The removal of signs, subsequent to their acquisition, is under the jurisdiction of the District Engineer.

**304.21 FEDERAL-AID PARTICIPATION****A. Eligibility by Location****1. Road Classification Reference**

Designation of the highway as to classification and location shall be determined from the Department of Transportation publication entitled, "Department of Transportation Control Section Record".

**2. Federal-aid Interstate and Primary Systems**

Federal participation will be limited to the acquisition and removal of signs and acquisition of sites along the Federal-aid Interstate and Primary Systems of trunk highways.

**3. Federal-aid Secondary and Non-Federal-aid Systems**

Payment for acquisition of signs and sites along highways other than the Interstate and Primary systems will be borne in total by State funds when no Federal share is payable.

Where severance damages can be established to remaining signs or property of a sign company; Federal participation will be allowed only if approved by FHWA pursuant to FHPM V7C2S12 (paragraph 6c(4)).

**4. State Standards**

Where State standards are more stringent than Federal control standards along Interstate and Primary Systems, the State standards will be applicable to those systems on the statewide basis.

**B. Eligibility by Non conformance**

Federal participation will be allowed only for signs which were lawfully erected by which are classified as non-conforming according to the provisions of Minn. Stat., Chapt. 173.

**C. Removal of Illegal Devices**

State personnel routinely remove illegal devices when detected.

**D. Removal for right of Way Acquisition****1. Pursuant to Minn. Stat., Chapt. 117**

When a sign was legally permitted as of June 8, 1971, and it subsequently becomes a part of a right of way project acquisition, the sign can be acquired as realty or moved as personalty.

The sign cannot be relocated to a con-conforming area.

If the sign, is located within a Federal-aid Interstate project, it shall be acquired as part of the right of way project, based on 90% Federal funds and 10% State funds.

When a sign is situated within the right of way of a Federal-aid Primary highway, it will be acquired under the provisions of this manual.

2. Relocation costs and the eligibility therefore are defined in the State's Relocation Manual 5-491.400, which is referenced to FHPM V7, C5, S3 as follows.
    - a. If the sign owner can obtain a permitted conforming sign site, he can be paid the actual costs to relocate the sign.
    - b. The owner of a sign may be reimbursed if he is eligible to move the sign, but chooses not to do so. The amount of reimbursement will be the lesser of:
      - 1) The in-place value of a sign.
      - 2) The estimated cost of removing the sign.
    - c. If the sign owner cannot obtain a new permitted conforming site, he is eligible to be paid the in-place value of the sign.
  3. If the sign is on Federal-aid Secondary or a non-Federal-aid project; it must be acquired with state funds only. If the sign can be legally relocated, it shall be relocated in accordance with the procedures in the preceding paragraph.
  4. When a legally permitted sign is located within an authorized right of way project, and is also in a conforming area (zoned business, commercial or industrial, or an area normally applied to these categories) it can be acquired realty or relocated within a permitted conforming area in accordance with the procedures outlined above.
  5. Pursuant to Minn. Stat., Chapt. 173
    - a. If the sign is located within a Federal-aid Primary project, it shall be programmed for acquisition and removal under the provisions of FHPM V7C2S12, if the sign meets the criteria of this section, and thereby be eligible for 75% Federal funds and 25% state funds.
    - b. If the sign can be relocated to a permitted conforming site, it can be relocated pursuant to the provisions of FHPM V7C2S12, Par. 6a2; whereby the sign owner is entitled to compensation up to the amount of the in-place value of the sign, less salvage.
- E. Removal of Signs Adjacent to the Highway
1. Signs which are non-conforming and which are located outside of the highway right of way and which are adjacent to a Federal-Aid Interstate or Primary highway, can be acquired as realty or relocated as personalty.
  2. If the sign is adjacent to a Federal-aid Interstate or Primary highway: acquisition will be pursuant to FHPM V7C2S12; relocation will be pursuant to FHPM V7C2S12, Par. 6a.
  3. The procedures referred to in the preceding paragraph, are in accordance with Minn. Stat. Chapt. 173. Sect. 173.17.

**304.22 SIGN PROJECT PROCEDURAL EXAMPLES**

All sign acquisitions and removals have been assigned a statewide project number. The project number is S.P. 8806. The S.P. number will be followed by a 900 number to designate either the construction district, or in some instances the acquisition of a defined company inventory. Following is an example in each such instance.

S.P. 8806 - 909 \*91-944. This would designate the acquisition of signs within the right of way that has been authorized for trunk highway construction in District 9.

S.P. 8806 (Horst) 910 \*91-943. This would designate the acquisition of nominal value signs from the Horst Advertising Company, pursuant to an agreement, on a statewide basis.

**304.23 PROJECT DESIGNATIONS AND WORK AUTHORITIES**

Work authority and State and Federal Project Numbers have been assigned by the Office of Financial Administration and the Program Management Division.

S.P. 8806-9 \*91-945  
CAF 000B(6)

Acquisition of outdoor advertising devices and sites located outside the limits of right of way owned or being acquired by the State of Minnesota; and, for removal payment in those instances where the device is removed by the sign owner or by the site owner.

**304.3 INITIAL PROCEDURES****District Engineer**

Has direct responsibility for estimating the means of control of advertising devices and removal of illegal, abandoned and non-conforming signs along the trunk highway system.

Has the responsibility for setting up the procedures for conducting surveys and maintaining an inventory as to the classification and location of signs along the trunk highway system.

The permits are issued under the jurisdiction of the District Engineer and are administered through the District Sign Technician.

**304.31 INVENTORY AND PERMIT****District Sign Technician**

Has the responsibility of maintaining inventory of signs within the district area, policing the district in conjunction with the area maintenance personnel, and issuance of sign permits (Form 17197) pursuant to Minn. Stat., Sec. 173.07 and 173.13, or in accordance with the rules and regulations.

The permit comprises seven digits, as per example: 7AD 0003. this is defined in this manner: The first number indicates the District (in this case District 7), the letters AD indicated (Advertising device), the last four numbers indicate the sign permit number (from 0001 through 9999).

Prepared Form 25183 and submits it to the Office of Right of Way.

Monies from permits are deposited with the Director of Financial Management for deposit into the Trunk Highway fund in accordance with established financial administration procedures.

The Accounts Receivable Unit in the Finance Section is responsible for sign permit renewals.

### 304.32 PREACQUISITION SUPERVISOR RESPONSIBILITY

#### Preacquisition Supervisor

Checks Form 25183 to determine if any of signs to be acquired fall into one of the two following categories:

1. Signs within right of way which have been authorized for acquisition for trunk highway needs:
  - a. Signs in this category will be acquired as a part of the regular right of way negotiation.
  - b. These sign acquisitions will be referenced to the regular S.P. as well as the sign project (S.P. 8806-9). In the event the sign is within right of way being acquired on a Federal-aid Primary highway, and it is a qualified sign, it will be eligible for 75% reimbursement; if it is on a Federal-aid Interstate highway, and it is a qualified sign, it will be eligible for 90% reimbursement.
2. Signs outside of trunk highway right of way:
  - a. Signs in this category will be acquired as a sign parcel acquisition.
  - b. These sign acquisitions will be referenced to the sign project S.P. and the sign permit number. In the event the sign is along a Federal-aid Interstate or Primary system trunk highway, and it is a qualified sign, it will be eligible for 75% reimbursement.

To accomplish this, the data as to a sign in these categories will be as follows:

Regular S.P.	9	*Area & Job
County		
Parcel		
Permit No.		
Sign S.P. 8806-9		*Area & Job
Federal No. CAF 000B (    )		

### 304.33 SIGN AND SITE OWNERSHIP

Ownership of the sign and the site, as shown on Form 25183, will be sufficient to establish proof of ownership of the sign and the site. It will also be sufficient evidence as to whether or not the sign has a bonafide permit. The type of an existing lease, license or permit (this includes verbal agreements) should be designated on the form.

Supervisor, Legal Unit

For signs acquired as part of a right of way project, the abstracting attorney in Right of Way will be notified so that he can prepare the appropriate acquisition documentation.

### **304.4 VALUATION PROCEDURE**

The acquisition of blocks of signs which are owned by a single company or other entity; and, where these signs are located in more than one Construction District of the State, will be handled through the Central Office Right of Way. Individual, privately owned and company owned signs, which are located only within a particular State District, will be acquired through the office of the District Right of Way Engineer.

Valuation Manager

Assign the valuation of the signs and the sites to a valuator. A valuation will be prepared on each sign and each site. All reviews will be made by an individual, other than the person making the original valuation.

Staff Appraiser

The sign owner may be contacted, either in person or by telephone, to obtain sign rental information. The sign owner or his designated representative may be given an opportunity to accompany the person who evaluates the signs.

A reasonable attempt may be made to contact the site owner, either in person or by telephone, to inform him of the purpose of the evaluation, and to determine whether or not there is a value lease, and to verify the rental being paid for the site. The site owner or his designated representative may be given an opportunity to accompany the person who evaluates the site.

The appraiser will visually inspect the sign and the site, and photograph the sign.

#### **304.41 VALUATION OF SIGNS**

##### **A. Nominal Value Plan**

Under this plan a category is established which defines a \$100.00 maximum payment for the sign and a \$100.00 maximum payment for the site. The value of these signs will be established by a staff valuator. No valuation support is required for either the sign or the site.

##### **B. Minnesota Cost Schedule**

Valuations and review of valuations will be assigned and prepared through the Valuation Section of the Department of Transportation. The valuations will be based upon a cost schedule developed by the Valuation Section and approved by the Federal Highway Administration, except that **September**

individually-owned signs may be appraised by using local cost data, etc. if the appraiser feels that the schedule is not realistic for a particular sign in a particular area. Signs with known dead copy, blank signs, painted out signs, or signs with “space available placards” that have current permits, will be appraised excluding any add-ons for art and display, pictorial, or reflective material.

All reviews will be made by an individual other than the person making the original valuation.

The valuation assemblage will contain the following:

1. A fully executed copy of Form 25183, entitled: District Title Agent’s and Sign Technician’s Field Report.
2. A fully executed copy of Form 25416, entitled: Sign Valuation.
3. A photograph of the sign or advertising device.
4. A fully executed copy of Form 25421, entitled: Advertising Device Valuation and Acquisition

Review.

### C. Gross Monthly Multiplier

The gross monthly multiplier (GMM) may be used in conjunction with the State schedule. Sign value, however, must be based on the State Schedule. The GMM can be used only as a guide to value and it may be helpful in estimating depreciation.

The instructions for the use of this method are set forth in the publication entitled: "A Guide for Estimating the Market Value of Conventional Outdoor Advertising Devices" which was compiled by the Valuation Section of the State Office of Right of Way.

The actual income for each sign should be used, when possible, particularly concerning painted bulletins and manufactured signs. This information is generally available on request from the sign owner or the advertiser. Poster panel rates are available from the sign owner's rate card and should be verified. The vacancy factor can be estimated from observed conditions by the valuator, or can be furnished by the sign owner or the site owner, and should be verified by the sign owner's account ledger system.

Sales listed in the Guide indicate that manufactured signs, when under lease, have a GMM of 20. Rural poster panels and bulletins range in GMM from 20 to 24. Metropolitan area panels and bulletins range in GMM from 24 to a maximum of 30 for every favorable locations. Income potential for bulletins and manufactured signs, not under lease at the time of inspection, must be estimated by the valuator.

## 304.42 VALUATION OF SITE

Site valuation will be limited to sites where a sign is actually in existence as of the date of the valuation, and was legally erected prior to the enactment of Minn. Stat., Chapt. 173, on June 8, 1971.

The site valuation will be limited to the exact area of the site, regardless of the amount of roadway frontage included in the total property ownership.

Consideration should be given to the terms of the existing lease and the annual rent received.

A verbal lease or agreement shall be considered to be valid only for the year current to the negotiation.

The value of the leasehold interest should be determined in the same manner as any other real estate leasehold that has a value of the lessee or lessor.

## 304.43 SEVERANCE DAMAGE - SPECIAL CASES

Generally, Federal compensation will not be allowed in payment of damages to remaining signs or other property of a sign company, alleged to be due to the acquisition of some of the company's signs. Unity of use of the separate properties as required pursuant to Minn. Stat., Sect. 117.086, "Eminent Domain", must be established. The State shall have the burden of establishing the recognition of damages pursuant to FHPM V7C1, and Minn. Stat., Chapt. 173 and 117. The State will provide and submit all cases to FHWA according to FHPM V7C2S12, Par. 5c4.

**304.44 REVIEW OF ESTIMATES AND VALUATIONS**

On all valuations a summary statement or sign acquisition review (Form 25421) will be attached. This will be a facing sheet on all sign estimates, appraisals or valuations.

All estimates shall be reviewed and approved. Review and approval of estimates shall occur before any negotiated agreement becomes binding upon the State.

All reviews will be made by an individual other than the person making the original valuation.

**304.5 NEGOTIATIONS AND ACQUISITION PROCEDURES**

Negotiations for acquiring the sign, the site and the removal of the sign will be conducted by either the valuator, or in applicable cases, a direct purchase agent.

When an equitable agreement is reached, an instrument for the acquisition of advertising devices will be executed (Form 25423) by the sign owner, and a release of interest will be executed (Form 25424) by the site owner, conveying their interests to the State. Where practicable, the sign and the site valuation and acquisition negotiation should be conducted simultaneously, by the same person. The above forms will be executed in duplicate (original for the State Auditor and copy for Transportation Department file).

The sign removal may be accomplished by negotiation with individuals (including sign or site owners), by State personnel or by contract.

An Attorney's Certificate of Title is not required to establish the ownership of the sign or the site.

**304.51 ADMINISTRATIVE SETTLEMENTS**

Director, Office of Right of Way

Whenever it reaches a point where a direct purchase acceptance is close to conclusion but cannot be completed, it may be logical to proceed on the basis of an administrative settlement. The procedure involved is outlined in the manual section on Direct Purchase.

**304.52 REFERRAL TO EMINENT DOMAIN CONDEMNATION**

State's Attorney General

All acquisitions which cannot be concluded by direct purchase are referred to the Assistant Attorney General assigned to the Department of Transportation for the preparation of an action in eminent domain condemnation.

**304.53 APPRAISAL FOR EMINENT DOMAIN**

In the event equitable agreement cannot be reached for acquisition, an eminent domain proceedings shall be instituted. In such cases complete appraisals instead of valuation by schedule are required for

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eminent domain. Value estimates shall be based on local cost data. Acquisition procedure shall be in accordance with Minn. Stat. Chapter 117, and Sec. 5-491.119 of the Department of Transportations Right of Way Manual, regarding legal preparation for an eminent domain action.

### **304.6 EMINENT DOMAIN PROCEDURE**

#### Preacquisition Supervisor

Assigns preparation of documents to Right of Way Legal Unit.

#### Supervisor

Assigns preparation of a petition and notice to an attorney within his unit. Submits completed material to the Office of the Attorney General.

This document of acquisition as to the sign and the site will not be filed for record in the office of the County Recorder unless specifically requested by the Office of the Attorney General.

#### Assistant Attorney General

Assigns the case to a Special Assistant Attorney General who arranges for a hearing in District Court.

The hearing in District Court is attended by a Special Assistant Attorney General, from the Office of the Attorney General, and an engineer from the Department of Transportation.

Viewing of the acquisition, the award of court-appointed commissioners and the procedures for possible appeal are in accordance with Minn. Stat., Chapt. 117.

If a trial before a jury develops from the appeal, the trial is conducted under the Minnesota Rules of Civil Procedure.

### **304.7 SIGN REMOVAL AND SALVAGE**

#### District Engineer

The responsibility of the sign removal will be with the District Engineer, through the Area Maintenance Engineer, in whose area the sign is located.

The sign owner will be offered the opportunity to regain and remove the device on or before the possession date stated in the acquisition agreement. Subsequent to the possession date the State will, without further notice to the sign owner, remove and dispose of the device as it sees fit.

In some cases, it will be more practical to have the land owner remove the sign, in which case the terms of payment to the land owner, if any, will be arranged by the District Right of Way engineer, pursuant to a brief written agreement.

In instances where the sign is not retained by the sign owner or the land owner, it will be assumed the sign and/or appurtenances have no marketable value, and the sign will be removed by State maintenance or construction personnel or by contract as debris.

### **304.8 PAYMENT FOR SIGN AND SITE**

Right of Way Accounting Officer

Once the sign and the site have been acquired, the parcel will be submitted to the Right of Way Funds Unit Accounting Officer.

He will check the file to verify that the documentation for Federal participation in the cost of sign removals is in accordance with FHPM V7C2S12, Par. 7.

The report of the actual sign removal will be made on Form 25427 and submitted to the Right of Way Funds Officer.

Payment will be made in accordance with established State Financial Administration procedures.

### **304.9 FILING IN RECORDS CENTER**

Preacquisition Supervisor

When signs are acquired within authorized highway right of way, the sign data will be filed in the regular right of way project file.

When signs are acquired outside of the highway right of way under the "Beautification Act", the following filing system will be used:

1. A solid lime-colored label is the color identification.
2. S.P. 8806 will be used for the entire State.
3. The 900 for Office of Right of Way will define the District, (Example: 905 = District 5).
4. Permit Number will appear on label, (Example: 7AD00007).
5. The county will be identified on the label.
6. Where applicable, the Federal project number will appear on the label.

For filing purposes, only the S.P. Number, the 900 Number, and the Permit Number will be necessary for filing reference.

**ACQUISITION (5-491.300)**  
**EMINENT DOMAIN - CONDEMNATION (5-491.305)**

**305.1 POLICY****A. Authority for Acquisition:**

The Commissioner of Transportation is authorized by the provisions of Minnesota Statutes, Section 161.20 to carry out the provisions of Article 14 of the Constitution of the State of Minnesota.

**B. Authority for Acquisition by Eminent Domain Proceedings:**

When direct purchase is not possible, feasible or desirable, the Director of the Office of Land Management, is authorized under the authority of the Commissioner of Transportation, to request the Attorney General to implement an action at law to acquire any lands and interests therein by eminent domain proceedings.

Minnesota Statutes, Chapter 117, deals with the procedure in eminent domain. Section 117.035 of said chapter stipulates as follows:

***117.035 PROCEEDINGS, BY WHOM INSTITUTED***

*If such property be required for any authorized purpose of the State, the proceeding shall be taken in the name of the State by the Attorney General upon request of the officer, board, or other body charged by law with the execution of such purpose; if by a corporation or other body, public or private, authorized by law to exercise the right of eminent domain, in its corporate or official name and by the governing body thereof; and if by an individual so authorized, in the individual's own name.*

**C. Commencement of Proceedings:**

An eminent domain proceedings is commenced by a memorandum of request from the Director of the Office of Land Management to the Manager of Transportation Division, Office of the Attorney General, requesting the acquisition of certain properties in accordance with the designated orders of the Commissioner of Transportation. In appropriate sequence, as defined in Minnesota Statutes Chapter 117, and in compliance with Federal-Aid Policy Guide, subchapter H Part 712 D. The following sequential steps are instituted:

1. The Manager of Transportation Division, Office of the Attorney General is requested to commence an action in eminent domain by the Director of the Office of Land Management in accordance with the orders of the Commissioner of Transportation. An attorney is assigned to the action by the office of the Attorney General, for the legal aspects of the action. The maps, plans, orders and legal descriptions are assembled and prepared in the Office of Land Management.
2. An engineer is assigned to the action by the Department of Transportation, charged with the engineering and technical aspects of the action.
3. The Legal and Real Estate Conveyance Unit prepares and forwards to the assigned Assistant Attorney General, the following:
  - a. Petition stating the names of all parties involved and describing the acquisitions as individual parcels, which is filed with the Court Administrator in the county in which the land is located.

- b. Notice of Lis Pendens, which contains the descriptions of the property involved in each parcel. This is filed with the County Recorder and/or Registrar of Titles in the county in which the land is located.
4. The Office of the Attorney General files the Petition and Notice of Lis Pendens.

**D. Hearing on Petition:**

Upon receipt of a notification by the office of the Attorney General that the District Court has scheduled a hearing on the Petition, the mechanics of acquisition are started. The Legal and Real Estate Conveyance Unit prepares and secures service of the notice. The notice states the names of all parties involved, describes the acquisitions and designates the date, time and place of the hearing on the petition before the District Court. In quick take actions, this notice also notifies the parties of the title and possession date and the vacation date. The notice is served on all parties either by personal service at least twenty days prior to the hearing, or by three weeks of published notification as provided for in Minnesota Statutes §117.055.

**E. Order Granting Petition and Appointment of Commissioners:**

Upon proper presentation of evidence, the District Court issues an order granting the petition and appointing three disinterested individuals who are residents of the county in which the property in question is located, to act as commissioners. The commissioners hold hearings with all interested persons; conduct viewings of the properties, determine damages and file a report of commissioners stating the award to parties having an interest in the property being condemned.

**F. Engineering Involvement:**

Engineering involvement may be involved in one or more of four areas during the course of an action in eminent domain. The four areas are as follows:

1. Hearings and Viewings
2. Report of Commissioners
3. Settlement of Appeals
4. Trials

The engineer associated with an eminent domain proceedings is an integral member of the engineer-attorney dual entity established as the Department of Transportation's source of contact with the public in acquiring property for trunk highway use.

## **305.2 PROCEDURE - HEARING AND VIEWINGS**

### **Assistant Attorney General**

1. Upon receipt of assignment of the proceedings, reviews all involved parcel files. Determine if the appraisal should be updated; and if needed makes a request to the Director of the Office of Land Management suggesting names of appraisers as appropriate. The acquisition is also reviewed for any possible legal determinations that should be made prior to updating of appraisal. When the proceeding is a quick take action pursuant to Minnesota Statutes §117.042, the attorney continues the titles and orders quick take payments to be made no later than the quick take date (90-day notice date).

### **Legal and Real Estate Conveyance Unit**

2. Assigns an Eminent Domain Engineer to the action and reviews the proceedings with the engineer

assigned.

**Eminent Domain Engineer**

3. Secures the maps, plans, parcel files, Commissioner's orders, legal descriptions, appraisals and reviews them.
4. Corrects any errors or omissions, prior to the date set for the hearing on the petition, notifying the Assistant Attorney General as appropriate.
5. Accompanies the attorney to the hearing on the petition. The attorney presents the state's petition to the District Court. The engineer explains the map, plans and any other engineering aspect to the court, the property owners, or their attorneys.
6. If the District Court denies the petition for acquisition, any affected parties of interest shall be entitled to petition the court for reimbursement as to reasonable costs and expenses; including reasonable attorney, appraisal and engineering fees actually incurred, prior to the hearing of the petition in district court. Such costs and expenses shall be allowed in accordance with the Attorney General's opinion addressed to the Commissioner of Transportation cited as Highways: Federal Law: Compliance with relocation provisions, 4 Op. Attorney General No. 24 (June 18, 1971).

**District Court**

7. Makes an order finding the acquisition in eminent domain to be necessary. Appoints three commissioners to act on behalf of the court, and sets a time and place for the first meeting. The court also states the daily fee for services performed.

**Eminent Domain Engineer**

8. Submits an eminent domain proceedings report of the hearing on the petition to the Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

9. Distributes copies of the report to the Director of the Office of Land Management, Project Coordination and Finance Unit and Property Management unit.

**Eminent Domain Engineer**

10. First Meeting:  
With the attorney, attends the first meeting of the commissioners. The commissioners take their oath of office. The engineer supplies the commissioners with maps, building drawings and reviews the general acquisition on the map and at the site with the commissioners.
11. Staking of Right of Way:  
The Eminent Domain Engineer shall ascertain that properties being acquired are properly surveyed and staked in such a manner as to be readily identifiable to owners and the commissioners. The Eminent Domain Engineer shall indicate on the map and on the site the location of the acquisition and the total ownership. All construction and engineering features shall be explained from the plans and at the site.

**Commissioners**

## 12. Testimony:

The commissioners having qualified according to law, shall meet as directed by the order of appointment to view the acquisition and hold hearings at a designated place to take testimony on behalf of the owners, tenants, lessees, all persons interested, and the state.

**Assistant Attorney General**

13. Testimony presented at commissioners' hearings regarding damages to market value which is in excess of the certified estimate value, relating to any parcel of right of way, must have prior approval of the Director of the Office of Land Management with documentation of this approval physically in evidence in the parcel file.

**Eminent Domain Engineer**

## 14. Date of Possession:

The Eminent Domain Engineer shall fully study the proposed contract letting date so he/she can coordinate the vacation and removal of any and all structures. When the State shall require title and possession of all or part of the owner's property prior to the filing of an award by the court-appointed commissions, at least 90 days prior to the date on which possession is to be taken, the State shall notify the owner of the intent to possess the property by notice served by certified mail. This notice shall also notify the owner of the vacation date. Trunk highway funds in the amount of the certified fair market value have been obligated by the Transportation Department and will be made available to the owner as provided for in Minnesota Statutes §117.042 on or before the date title and possession is to pass to Mn/DOT. In all other cases, the State has the right to the title and possession after the filing of the award by the court appointed commissioners as follows:

- (a) if appeal is waived by the parties upon payment of the award;
- (b) if appeal is not waived by the parties upon payment or deposit of three-fourths of the award.

It is the responsibility of the engineer to be certain the report of commissioners contains a description of the buildings and other structures, together with a specific designation of the disposition and the date of their removal or vacation.

In proceedings where title and possession are not being acquired pursuant to a 90-day quick take notice, occupancy of not less than 90 days or more than 120 days from the date of the award of commissioners is granted to each owner of improved property and right of possession by the State is exercised upon expiration of that period. The State will send dislocatees a subsequent notice "Notice to Vacate Premises" (Form 25446) as to the date the property must be vacated. The notice must be given at least 30 days prior to the date of vacation.

In case the property is not required for immediate construction a greater period of occupancy can be arranged by agreement and upon payment of an agreed rental. Actual time of entry on improved properties depends upon status of need. By policy the State normally does not enter until partial payment has been made available.

## 15. Amendment in Right of Way Taking:

Where it seems prudent and practicable to make some amendment to the form of acquisition, the circumstances will be discussed with the District Engineer, and, if any change is approved the District Engineer will advise the Director of the Office of Land Management of any such change by written memorandum. Attorney General's office to be notified to prepare and file proper stipulations and amendments to the notice of lis pendens.

16. Availability of right of way map and plans information:  
Minnesota Statutes §117.055 states: "*...Any owner shall be furnished a right of way map or plat of all that part of land taken, upon written demand, provided that the petitioner shall have ten days from the receipt of the demand within which to furnish the same. Any plans or profiles which the petitioner has shall be made available to the owner for inspection.*"
17. Preparation of Report of Commissioners:  
Assists the Assistant Attorney General in the preparation of the report of commissioners. Makes certain that all items being acquired by the State or retained for removal by the owner, are specifically designated in the report.

### **305.3 PROCEDURE-REPORT OF COMMISSIONERS**

#### **Commissioners**

1. Filing of Report - Appraisal Fees:  
The commissioners shall file their report with the Court Administrator within 90 days of the Order of the Court, unless the order otherwise prescribed, or under certain conditions the Court may extend the time for making and filing the report.
2. The commissioners may, at their discretion, allow and show separate from the award for damages, reasonable appraisal fees for the property owners not to exceed a total of \$500 for each property owner.
3. Copies of Report:  
The "Commissioner's Report" shall be prepared in quadruplicate with the original being filed with the Court Administrator, and the duplicate original with two copies being filed in the central office of the Department of Transportation.

#### **Eminent Domain Engineer**

4. Listing of Occupants:  
The engineer shall make certain that any listing of tenants in the report of commissioners and indicated as being occupants of a designated premises, is current as of the title and possession date if the action is a "Quick Take Action" or current with the date of the filing of the report if not a "Quick Take Action". This listing of tenants as occupants shall be reported on Form 25384 Rev. and submitted to the acquisition engineer as soon as possible after the filing of the report of commissioners.
5. Payment for Services:  
Each commissioner shall submit to the Eminent Domain Engineer an invoice, indicating the total sum for services performed at daily fees set by the court in its order, plus allowance for miles traveled and meals. The invoice shall be signed and validated by each commissioner and approved by the engineer and attorney. Invoices are submitted to the Project Coordination and Finance Unit for payment.

#### **Assistant Attorney General**

6. Transmittal Memorandum:  
The Assistant Attorney General writes a memorandum to the Manager of the Transportation Division, giving a resume for each parcel, and including recommendations whether or not an appeal should be taken from the award of commissioners. The transmittal memorandum also includes instructions as to what payments remain to be made, the payees, interest is to be paid from what date, and to whom payment should be mailed.

**Eminent Domain Engineer**

7. The Eminent Domain Engineer shall submit a written report on the viewings and hearings, to the Director of the Office of Land Management. A tabulation of appraisals, certified valuations and awards will be submitted, indicating if an appeal from the award of commissioners is recommended.

**Director of Office of Land Management and Office of Attorney General**

8. **Consideration of Appeals:**  
Final decision for appeal from an award of commissioners is made cooperatively by the Office of the Attorney General and the Director of the Office of Land Management on the basis of full consideration of all pertinent information with indication of concurrent approval in the parcel file, together with supporting information in case of substantial difference between the award and the state's certification of fair market value.

**305.4 PROCEDURAL REQUIREMENTS AFTER FILING OF REPORT OF COMMISSIONERS**

1. **Notice to Respondents:**  
In accordance with Minnesota Statutes §117.115 Subd. 2: Within ten days after the date of the filing of the report of commissioners, the State shall notify each respondent and his or her attorney by mail as to the date of the filing of the report, the amount of the award and all the terms and conditions thereof. The State shall also file with the court administrator an affidavit of mailing of the notice, setting forth the names and addresses of all the persons so notified.
2. **Appeal Period:**  
In accordance with Minnesota Statutes §117.145: At any time within 40 days from the date of the filing of the report of commissioners, any party to the proceedings may appeal from the award of damages, or from any omission to award damages. If one party appeals an award, the other party(ies) have an extra 10 days to file a cross-appeal.
3. **Partial Payment:**  
In accordance with Minnesota Statutes §117.155: A partial payment representing the unpaid balance of three-fourths of the award of damages may be demanded of the petitioner; however, the petitioner may by motion, request the Court to order reduction in the amount of the partial payment for cause shown. In no event will the partial payment be less than the state's estimated fair market value. If an appeal is taken from an award the State may, but it cannot be compelled to, pay the entire amount of the award pending the final determination thereof. If any owner or anyone having an interest in the award refuses to accept such three-fourths payment, the petitioner may pay the amount thereof to the Court Administrator to be paid out under the direction of the court. A partial payment made as such shall not draw interest upon the amount thereof from the date of payment, and upon final determination of any appeal the total award of damages shall be reduced by the amount of the partial payment. If no appeal is taken, the unpaid portion of the award, plus interest, if any, must be paid.
4. **Payment to Court Administrator:**  
Payment of the damages awarded may be made or tendered to the Court Administrator if the residence of a party is unknown, or there is a minor or other person under legal disability, or a party refuses to accept payment, or if for any reason it is doubtful to whom any award should be paid. The award when deposited shall not draw interest from date of deposit. Minnesota Statute §117.125.
5. **Total Payment:**  
Final payment of the amount of any award, settlement, or final judgment upon appeal shall, for all purposes, be held and construed to be full and just compensation to the respective owners or the persons interested in the land.

**305.5 PROCEDURE-SETTLEMENT OF APPEALS****Manager of Transportation Division, Office of the Attorney General**

1. Discussion and Recommendation for Settlement:  
At any time the attorney for the State can meet with any party involved in an appeal from the award noted in the report of commissioners in an attempt to equitably resolve the differences of any appeal noticed for trial. The Manager of Transportation Division, Office of the Attorney General may conclude a settlement on his/her own authority where time or valid reasons preclude consultation with the Director of the Office of Land Management.

**Eminent Domain Engineer**

2. The Eminent Domain Engineer consults with the state's attorney regarding any possible grounds for settlement of a pending appeal. If some factor seems to have been omitted from the State's appraisal and certification of value, then a request can be directed to the Director of the Office of Land Management requesting a new appraisal.

**Assistant Attorney General**

3. When it is determined that it is in the public interest to make a legal settlement of an appeal the Assistant Attorney General writes a recommendation of settlement to the Manager of Transportation Division, Office of Attorney General. Whenever the settlement is in excess of the amount certified as just compensation the rationale for the settlement shall be set forth in the recommendation. All reasoning and documentation shall be included in writing.

**Manager of Transportation Division, Office of the Attorney General**

4. If the Manager of Transportation Division, Office of the Attorney General approves the settlement approval for further processing is indicated on face of memo.
5. Transmit Assistant Attorney General's memorandum and parcel file to Director of the Office of Land Management.

**Eminent Domain Engineer**

6. Submittal of settlement memorandum:  
Writes settlement memorandum to Director of the Office of Land Management, setting forth all circumstances and indicating the recommendation as to settlement of the appeal.
7. Transmits Eminent Domain Engineer's memo to Director of the Office of Land Management.

**Director, Office of Land Management**

8. Approval of settlement memorandum:  
Reviews settlement and proposal and if he/she approves, endorses the eminent domain engineer's memo, and requests preparation of proper stipulation for settlement. Documents in support of the stipulated settlement will be placed in the parcel file pursuant to 23CFR 712 Subpart D.

**Assistant Attorney General Assigned to Settlement of Stipulations**

9. Prepares stipulation for settlement. Final payment upon stipulated an appeal may be more or less than the part payment and adjustment for final payment must be made accordingly.

### 305.6 PROCEDURE-TRIALS

#### Assistant Attorney General

1. Notice for Trial:  
When a case is noted and called for trial the case is assigned to a Assistant Attorney General and the Acquisition Engineer will have a trial engineer assigned to the case. The Attorney is responsible at time of trial for legal matters, for introduction of testimony and valuation witness. He/she shall cooperate with representatives of the Office of Land Management as necessary.

**Note:** When an appeal is noted for trial and the issue cannot be settled by agreement, the case shall be tried by a jury, unless such jury trial is waived. Such an appeal when noted for trial is tried as in the case of a civil action and the court may direct that issues be framed and additional parties be joined and required to plead therein when necessary and the case shall be tried by a jury consisting of six residents of the county in which the property is located, unless the parties otherwise agree. The State and the owner have the right of limited discovery after an appeal has been filed from the award of commissioners.

#### Eminent Domain Engineer

2. Preparation for Trial:  
Discuss trial aspects with Assistant Attorney General. Prepares right of way map and other court exhibits including aerial photographs, topography maps, etc. Reviews and compiles all engineering data from plans and cross sections. When necessary makes arrangements to have any engineering specialist prepare to give testimony. Has the tract restaked for the purpose of viewing by the jury.  
  
Assists trial attorney in obtaining valuation or technical witnesses.
3. Engineering Testimony:  
Testifies in court as to the pertinent engineering data involved in the condemnation under trial.

#### Assistant Attorney General

4. Prior Approval of Testimony:  
Testimony presented in open court at time of trial regarding damages or market value which is in excess of the certified estimated value, relating to any parcel of right of way, must have prior approval of the Director of the Office of Land Management with documentation of this approval physically in evidence in the parcel file.

#### Eminent Domain Engineer

5. Usually, at the request of the court and in the company of the bailiff, conducts the jury view of the property in litigation.
6. Trial Summary:  
When the jury returns a verdict, eminent domain engineer writes his summarization memorandum of the trial, to the Director of the Office of Land Management.

#### Assistant Attorney General

7. At the conclusion of each trial the trial attorney submits a summarization memorandum of the trial to the Assistant Attorney General pursuant to 23 CFR 712 Subpart D. The State enters into a stipulation in lieu of judgment, which is signed by the owners and their attorney, the Attorney General's office and the Director of the Office of Land Management under delegated authority from the Commissioner of

Transportation.

8. Appeals from Jury Verdicts:

Appeals from jury verdicts are based only on errors of law or procedure in the jury trial as recited by the trial attorney in his memorandum of the case to the Assistant Attorney General, pursuant to 23 CFR 712 Subpart D. Decision to appeal rests entirely with the office of the Attorney General. The Assistant Attorney General is chief counsel for the Department of Transportation and in best position to determine what legal action, if any, can be successfully undertaken or should be taken. Therefore preponderance of judgment for legal action rests with him or attorney delegated by him.

9. Payment:

At the time of final payment upon executed stipulation in lieu of judgment on a jury verdict, interest is allowed at the statutory judgment rate, unless otherwise specified or agreed upon, on the final verdict less amount of partial payment and is payable for the period of time from the quick take date or otherwise from the date of filing of the award of commissioners or from the date of the state's possession whichever occurs first, to the date of verdict.

Interest shall be computed in accordance with Minn. Stat. 117.195. The Assistant Attorney General will advise the Director, Office of Financial Administration, concerning the payment of interest due on each parcel.

**Manager of Transportation Division, Office of the Attorney General**

10. Assessment of Costs:

In accordance with Minnesota Statutes §117.175 Subd. 2: *"The Court, in its discretion, after a verdict has been rendered on a trial, may allow as taxable costs reasonable witness and appraisal fees of the owner, together with the owner's reasonable costs and the disbursements. No expert witness fees, costs or disbursements shall be awarded to the State regardless of who is the prevailing party."*

**Legal and Real Estate Conveyance Unit**

11. Final Certificate:

The final certificate in condemnation proceedings is filed for record with the Court Administrator. A certified copy thereof is filed for record with the County Auditor and County Recorder and/or Registrar of Titles; which record shall be notice to all parties of the title of the petitioner to the lands therein described.

**Manager of Transportation Division, Office of the Attorney General**

12. Owner Entitlements:

If a person successfully brings an action under Minnesota Statute §117.045, compelling an acquiring authority to initiate eminent domain proceedings relating to his real property which was omitted from any current or completed eminent domain proceedings, such person shall be entitled to petition the Court for reimbursement for his reasonable costs and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred in bringing such action. Such costs and expenses shall be allowed only in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1971) (certified as amended at 42 U.S.C. §4601 (1994)), any acts amendatory thereof, any regulations duly adopted pursuant thereto, or regulations duly adopted by the State of Minnesota, its agencies or political subdivisions pursuant to law.

**ACQUISITION (5-491.300)**  
**PROCEDURES FOR CONTROL OF JUNKYARDS**  
**SANITARY LANDFILLS AND GARBAGE DUMPS (5-491.306)**

**306.1 POLICY AND DEFINITIONS**

This section provides procedures for the control of junkyards, garbage dumps, and sanitary landfills visible to the motoring public from Minnesota's trunk highway system. These guidelines are established pursuant to the Federal Highway Beautification act. of 1965, 23 U.S.C. 136, Federal Regulations, 23 CFR Part 751 and Minnesota Statutes § 161.242.

For purposes of this section, the following terms have the meaning given them.

- A. "Junkyard" means an establishment, place of business, or place of storage or deposit, which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and shall include garbage dumps and sanitary fills not regulated by the Minnesota pollution control agency, any of which are wholly or partly within one half mile of any right-of-way of any state trunk highway, including the interstate highways, whether maintained in connection with another business or not, where the waste, body, or discarded material stored is equal in bulk to five or more motor vehicles and which are to be resold for used parts or old iron, metal, glass, or other discarded material.
- B. "Dealer" means any person, partnership, or corporation engaged in the operation of a junk yard.
- C. "Junk" means old or scrap hazard signs, copper, brass, rope, rags, batteries, paper, synthetic or organic, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles or farm or construction machinery or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
- D. "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
- E. "Industrial Area" - Industrial area means an area which is zoned for industrial use by the appropriate zoning authority.
- F. "Unzoned industrial area" means the land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and the land within 1,000 feet thereof which is located on the same side of the highway as the principal part of said activity, and not predominantly used for residential or commercial purposes, and not zoned by state or local law, regulation or ordinance.
- G. "Industrial activities" means those activities permitted only in industrial zones, or in less restrictive zones by the nearest zoning authority within the state, or prohibited by said authority but generally recognized as industrial by other zoning authorities within the state, except that none of the following shall be considered industrial activities:
  - (1) outdoor advertising devices as defined in Minnesota Statutes, section 173.02, subdivision 2;
  - (2) agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands;
  - (3) activities normally and regularly in operation less than three months of the year;
  - (4) activities not visible from the traffic lanes of the main traveled way;
  - (5) activities conducted in a building principally used as a residence;
  - (6) railroad tracks, minor sidings, and passenger depots; or
  - (7) junk yards, as defined in paragraph (A).

- H. "Nonconforming Junkyard" - a junkyard established prior to July 1, 1971 which is located outside of a zoned or unzoned industrial area and which is within one-half mile of the right of way of a state trunk highway and visible from the highway.
- I. "Conforming Legal Junkyard" - A junkyard which complies with the requirements of the Junkyard Act. This shall include: a) yards located in zoned or unzoned industrial areas, b) yards located outside of industrial areas which are not visible from the main traveled way of a state trunk highway, c) yards located outside of zoned or unzoned industrial areas which have been screened, removed or relocated to comply with the Junkyard Act and the screening standards established by the Commissioner.
- J. "Illegal Junkyard" - A junkyard established after July 1, 1971 which violates the provisions of the Junkyard Act. It also means any junkyard located outside of a zoned or unzoned industrial area within one-half mile of a state trunk highway in which junk becomes visible from the highway or if it was in compliance and becomes visible after the yard has been brought into compliance with the Junkyard Act.
- K. "Effective Screening" - Screening which upon completion of the individual screening project blocks vision such that the contents of a junkyard are not visible from the state trunk highway and are concealed from sight on a year-round basis.
- L. "Trunk Highway" - All roads established or to be established under the provisions of Article 14, Section 2 of the Constitution of the State of Minnesota, including the interstate highways.

## **306.2 ZONING, POLICIES AND PROCEDURES**

- A. The state program to control junkyards will be implemented in the following manner:
  - 1. An inventory of all junkyards located within one-half mile of a state trunk highway and visible from the highway will be maintained by each District Office.
  - 2. A junkyard may be screened, removed or relocated, at state expenses when:
    - a. The junkyard is nonconforming under state law and
    - b. One of the following conditions applies:
      - (1) The junkyard is legal under county or municipal ordinance (in proper district and has any required permit), or
      - (2) The junkyard is nonconforming under county or municipal ordinance (located in wrong zone, but existed there lawfully prior to adoption of local ordinance and is permitted by ordinance to continue to exist), or
      - (3) The junkyard is illegal under county or municipal ordinance for failure to erect a screen and the local government does not object to inclusion of the yard in the state's program or the yard is illegal for failure to obtain required permits or licenses and the local unit of government agrees to grant, and does grant, prior to programming, any necessary permits or licenses.

- B. County, township and city zoning ordinances will be reviewed by the District as to the legal status of the yard prior to starting any action to control a junkyard.
- C. Junkyards which are illegal under local ordinance because they are illegally located (not in the proper zoning district) but which are nonconforming under state law will be handled in the following manner:
  - 1. The District Office will contact the local unit of government which has jurisdiction over the location of the junkyard and explain the state program and the status of each junkyard which would be eligible for the state program were it not illegal under local ordinance;
  - 2. Local enforcement will be encouraged and support will be sought from appropriate offices.
  - 3. If the local government wishes to amend its ordinance or grant a permit, District Office will advise them whether the Department can work under the proposed amendment. Advice will be given from the State Junkyard Program Coordinator, Office of Technical Support if requested.
- D. Landfills and dumps should be recorded on the inventory in the District. The Minnesota Department of Transportation will control a landfill or dump only if it is not subject to Pollution Control Agency regulations.
- E. A junkyard which is located partially within and partially without one-half mile of a state trunk highway and which is visible from the highway will be controlled as though the entire site were within one-half mile of the highway.

### **306.3 DETERMINATION OF METHOD OF CONTROL**

One main objective is to screen junkyards which are ongoing and productive businesses. In some instances, screening will not be possible due to terrain or economics. If it is not feasible to screen a yard, the inventory should be removed or relocated to a legal property or disposal plant.

Consultation must be held with each junkyard owner prior to determining the method of control. A yard should be screened only when the owner intends to maintain an ongoing business. In such a case, if screening is topographically and economically feasible no other method need to be considered. The District will by survey determine whether effective screening is topographically feasible and will also estimate the cost to screen. If it is not feasible to effectively screen a yard or if it would be extremely costly, the District must estimate the cost and feasibility of relocating the junkyard. The District will determine which method of control to use after consultation with the owner and a comparison of the cost and feasibility of each method.

#### **THE CONTROL METHOD WILL BE DETERMINED AS FOLLOWS:**

##### **1. Estimate Cost to Screen by Considering The Following Factors:**

- a. Approximate length of screen required taking into consideration height of screen and gates.
- b. Earthwork, if any
- c. Landscaping
- d. Any moving expenses
- e. Cost of obtaining any necessary easements

- f. The Districts may consult with the State Junkyard Screening Coordinator for the estimated costs of 1.a. thru d. above.
  - g. Consider whether the completed fence will achieve “effective” screening from the highway as required by standards promulgated by the Minnesota Department of Transportation.
- 2. Estimate cost to remove or relocate by means of detailed estimate taking into consideration:**
- a. Market value of personal property.
  - b. Loss in land and/or building value, if any.
  - c. Cost of easement area for removal
  - d. Cost to dispose of material, secure estimates from minimum of three qualified movers, whenever possible.
  - e. Cost to clean site.
  - f. Detailed estimates may be coordinated through the Central Office Land Management.
- 3. Determine feasibility of relocation by considering the following:**
- a. Availability of a properly zoned site, not visible from a State Trunk Highway, to which the business can be relocated.
  - b. Consider searching costs reimbursable up to \$1,000.
  - c. Estimates from three qualified movers of the cost to move all the junk or salvage material to a conforming location.
  - d. Any loss in value to the land and/or buildings.
  - e. Cost to clean up original site.
  - f. Relocation benefits if applicable.

NOTE: When the District has determined the optimal method of control the District will notify the Director of Land Management in writing and request authority to proceed. The request for authorization should indicate the chosen method of control, the reason for choosing that method, that the owner and local government have been consulted and the estimated cost of the project.

#### **306.4 IMPLEMENTATION OF CONTROL; SCREENING**

**When the screening of a junkyard has been authorized by the Director of Land Management, the following steps will be taken:**

1. The District will prepare a title map and a request that titles be ordered.
2. The District will establish right of way and property lines by survey and prepare a site survey.

3. The District will prepare a concept plan layout showing the general location of the screen, height requirements, gate locations and size, possible easement requirements and future landscaping. This concept layout must be in cooperation with the junkyard owner. Assistance in the preparation of the concept plan and the screening recommendations is available from the State Junkyard Screening Coordinator, Office of Technical Support.
4. The Districts will design the screen using design details, treatment recommendations and special design considerations provided by the State Junkyard Screening Coordinator, Office of Technical Support. Screens should be located far enough inside the property line to allow construction and maintenance to take place on the owner's property. Consideration should be given to setback requirements, sight corners, screen height, owner considerations and desired visual effect. Local government approval of the screen design is not necessary but the concerns of the local government should be accommodated when possible.
5. Prepare a PS&E package in accordance with Mn/DOT procedures.
6. The District will obtain the full and true and prepare the field title report and parcel sketch and submit this information along with the attorneys certificate of title and the authorization map to the Project Coordination and Finance Unit for processing. The authorization map should show the property boundaries, the location of junk and the right of way line.
7. The District must seek State Historic Preservation Office (SHPO) approval for the project. This should be done at about the time the authorization map is sent in. The Chief Archaeologist, Project Development Section, Office of Technical Support will seek approval from the SHPO. The District should submit the following information to the Preliminary Design Unit:
  - a. S.P. Number
  - b. A description of the project
  - c. Proposed letting date
  - d. Index map showing the general location of the screen in the county or township
  - e. A detailed plan showing the proposed screen alignment and the junk in relation to section lines or crossovers
  - f. A brief letter requesting SHPO review
8. An easement will be acquired for the erection of the screen. If the screen easement is not adjacent to the right of way, an easement must be acquired from the right of way to the screen easement area to provide access to the screen easement. In each case in which an easement is to be obtained, the District must inform the owner that he has a right to have an appraisal of the easement made (max. \$500 reimbursement for appraisal) and that he will be paid the market value of the easement. If the owner wishes to donate the easement, the District must obtain from him a written waiver stating the he knows he has the right to an appraisal and to be paid for the easement, and that he wishes, to donate the easement. If the screen is to be built so closely to the adjoining property that screen construction or maintenance will require workman or the owner to go onto the adjoining property, an easement must be obtained from the adjoining property owner.
9. The easement will be appraised. All damages shall be recognized including:
  - a. Temporary loss of use of screening easement area.

- b. Possible permanent loss of usable area upon which the screen is erected and the area outside of the screen.
  - c. Remainder damage, if any, to consolidation of junk within a yard. This would require before and after appraisals.
10. The central office of Land Management will write the description, prepare the documents for acquisition of the easement and when applicable will obtain federal authorization to acquire the easement. The document and file will be returned to the District to make the offer and acquire the easement.
  11. When the easement agreement is signed, the District should inform the owner that he will be notified 30 days prior to the letting date that he must clear the easement area within 30 days after receiving such notice. The District will notify the Project Coordination and Finance Unit when the easement is cleared.
  12. Moving expenses for the removal of material from the easement area will be paid after completion. Estimates will be obtained prior to the move or surveillance procedures will be used as described under Section 306.5 Implementation of Control; Relocation.
  13. The claim for payment will be made on appropriate relocation forms.

### **306.5 IMPLEMENTATION OF CONTROL; RELOCATION**

When the owner elects to relocate to another site, moving expenses will be reimbursed as provided in relocation procedures. **Reimbursement will be made only if a junkyard is relocated to a properly zoned area or to an unzoned industrial area not visible from a state trunk highway, or sent to an approved disposal site.**

A properly zoned area means an industrially zoned district or an area that is located at least a half-mile from or not visible from a state trunk highway and which does not violate local ordinances.

The owner must submit written approval from the local governing authority which has jurisdiction over the area to which he intends to relocate, including copies of any necessary permits or licenses.

**When the relocation of a junkyard has been authorized by the Director of Land Management, the following steps will be taken:**

1. The District will submit to the Project Coordination and Finance Unit title maps and a request that titles be ordered for the site to which relocation is proposed and also for the present junkyard site.
2. The District will investigate the proposed site and confirm compliance with the above requirements and that site is not visible from a state trunk highway.
3. The District will submit the attorney's certificate of title, full and true, field title report and parcel sketch for the present site and attorney's certificate of title, field report, authorization map and copies of licenses, permits or written approval of the local governing authority for the proposed site.
4. Before and after appraisals will be made of the site from which the operation is being removed to determine if any loss in value has occurred to the land and/or buildings.
5. If damages are to be paid, the District will make the offer.

**Relocation payments will be determined as follows:**

6. Actual cost
  - a. The actual cost of relocation will be paid when, due to the type of material to be relocated, it is impossible to obtain realistic estimates.
  - b. Surveillance must be provided during the move. District personnel will be required to maintain a record of hours worked, equipment used and rates. The District may determine whether a full time or spot check surveillance procedure is to be used.
  - c. The District and the owner must plan the move so that adequate surveillance may be arranged.
7. Move based on estimates
  - a. If the district determines that realistic estimates can be obtained from qualified movers prior to relocation, payment may be based on the lower of the three estimates as set forth in the relocation procedures.
  - b. Payment will be made only for materials actually relocated.
8. Central Office relocation staff will provide information and assistance to the Districts upon request.

**Making Payments:**

9. The District must inspect the site to assure that proper cleanup has been accomplished **before payment is made to the owner**. After the move and cleanup are completed, the owner will claim payment on appropriate forms. The District must also assist the owner in submitting claims.
10. Payment for housing supplements and for moving of household or other personal property will be made in accordance with the provisions of relocation procedures.
11. Actual reasonable expenses incurred in searching for a replacement business site may be reimbursable in an amount not to exceed \$1,000.

**306.6 COMBINATION OF METHODS; SCREENING AND RELOCATION**

In some cases, it may be desirable to screen a portion of a yard and eliminate junk or salvage materials from the remainder. To accomplish this, the procedures under both 306.4 and 306.5 must be followed. The cost to move material behind a screen and cost to clean the unscreened remainder of the site may be eligible for reimbursement.

**306.7 REIMBURSEMENT OF TRANSPORT COSTS**

1. It may be desirable to allow the owner to remove all junk from the property and have the State reimburse him for loading, hauling or transportation costs. No payment for the material will be made by the State.
2. The owner may haul to an approved disposal site or to a processor and keep the proceeds from the sale, if any. The District must determine that the materials will be removed to a licensed landfill or to a site which does not violate the State Junkyard Act or local ordinances.

3. When the Director of Land Management has authorized reimbursement of the owner's cost to haul away junk, the District will submit to the Central Office Project Coordination and Finance Unit the authorization map, attorney's certificate of title, field report, and a letter setting forth the circumstances which dictate use of this method.
4. The owner of the junkyard will be reimbursed for either the actual cost of loading and transporting the materials to a suitable disposal site or will be paid the lower of three estimates of the cost to transport the junk. The amount of the payment will be determined in accordance with 404.3. When the District determines that the cost to transport the junk will be less than \$5,000, an estimate may be made by a qualified state employee.
5. When estimating the cost to transport junk to a processor, the distance to the nearest major processor will be used.
6. When this method is used, if a third party is hired to transport the junk, the owner must hire the mover.
7. The District must inspect the site to assure that proper cleanup has been accomplished before payment is made to the owner. After the move and the cleanup are completed, the owner will claim payment on proper relocation forms.

### **306.8 PAYMENT IN LIEU OF ACTUAL MOVING COSTS**

In certain circumstances, a junkyard may be eliminated by allowing the owner to remove all junk from the site at his own expense and receive payment in lieu of moving expenses in accordance with relocation procedures. The owner will not be paid for the junk or the removal of it. To qualify, for this payment, the operation must "contribute materially" to the operator's total income. A part-time operation which does not "contribute materially" to total income will be eligible for this payment. Refer to the relocation rules for definitions and eligibility.

### **306.9 STATE PROJECT NUMBERS**

- A. All junkyard acquisitions and removals will use the specific State Project designations as the controlling number for the trunk highway adjacent to the junkyard being processed.
- B. As a means of distinguishing the project as a junkyard project, a statewide project number, 8807, will be used also. The number 8807 will be followed by a number which will designate the construction district. Each site will be assigned a parcel number in consecutive order by the District (not by the county). Parcel number will be assigned by the District Right of Way section.

Example: S.P. 6805 (T.H. 32)  
8807-02

This will indicate a general location as well as a junkyard negotiation in Construction District 2.

- C. All junkyard acquisitions and removals for each District have been assigned an incidental and design cost work authority number. Refer to office of Finance and Support Services Bulletin Number 78-5, (March 15, 1978).

**NOTE: As of 1998, we have little dedicated money. Payments may be processed through the Office of Technical Support. Verify funding source with State Junkyard Program Coordinator.**

**306.10 PROGRAMMING**

The District will establish proposed letting dates for contracts for screening junkyards. The District must establish appropriate funding for the project. The proposed letting date should be reasonable and should allow adequate lead time. A letting date should be sent when the certificate of title is ordered.

**306.11 LETTER OF CONFORMANCE**

After a junkyard has been properly controlled by the erection of a screen, relocation or removal of junk, a letter of conformance will be sent by registered mail to the property owner and all interested parties by the District. This letter will establish the date of compliance with state law. A copy of the letter of conformance and copy of registered mail receipt will be sent to the Director of Land Management and to the State Junkyard Program Coordinator to be placed in the project file.

**306.12 EMINENT DOMAIN**

If it is necessary to use eminent domain proceedings to achieve effective control of a junkyard and the junkyard owner does not wish to cooperate in determining the appropriate and most feasible method of control, the District must determine the method of control in accordance with the procedures of 306.3 - Determination of Method of Control.

**306.13 ILLEGAL YARDS****ILLEGAL YARDS WILL BE CONTROLLED.**

Refer to Mn/DOT Junkyard Control Reference Guide for methods and procedures to control illegal junkyards. For information, contact the State Junkyard Program Coordinator.

**306.14 FILING IN RECORD CENTER**

All files for junkyard, sanitary landfill, and garbage dump parcels which are controlled under the junkyard program shall bear solid orange-colored labels and shall be placed in a separate file, apart from right of way parcels, when stored in the Record Center.

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**

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- 5-491.404 PAYMENT FOR MOVING AND RELATED EXPENSES
  - .404.1 Payment for Actual Reasonable Moving and Related Expenses-Residential Moves Policy
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  - .404.5 Payment for Actual Reasonable Moving Related Expenses; Non-residential Moves Policy
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- 5-491.405 REPLACEMENT HOUSING PAYMENT
  - .405.1 Replacement Housing Payment for 180-day Homeowner-Occupants Policy
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- 5-491.406 MOBILE HOMES
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**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**RELOCATION GENERAL POLICY (5-491.401)**

**401.1 LEGAL COMPLIANCE POLICY**

- A. The Minnesota Department of Transportation will fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq) and 49 CFR Part 24 promulgated pursuant thereto, on all transportation projects undertaken by Mn/DOT. The authority for this assurance is found in Minnesota Statutes, Section 117.51, 117.52, 117.53 and 645.31 (2).
- B. The Minnesota Department of Transportation when acting as an agent for cities, counties, and townships in acquiring Right of Way will fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq), on all transportation projects. The responsibility for this compliance is found in Minnesota Statutes, §161.36.
- C. The Minnesota Department of Transportation will fully comply with 23 CFR §710.201(b) which states: (b) *Program oversight*. The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations of State and Federal laws and regulations.

**401.2 RELOCATION ADMINISTRATION**

The Minnesota Department of Transportation will administer all laws and policies pertaining to relocation assistance.

- (1) It shall be the responsibility of the Department, or designees to make any and all assistance available to eligible parties whether or not there is a claim for financial payment.
- (2) The Department shall control and process all claims for financial payment on Mn/DOT projects. Local Public Agency (LPA) projects will process their own payments and are encouraged to use Mn/DOT approved forms.

**401.3 RELOCATION RESPONSIBILITIES**

**(1) Office of Land Management (OLM)**

**(a) Mn/DOT Projects**

Overall policies and services are supervised by the Relocation Manager.

The Relocation Unit in the OLM provides program guidance (including instituting new procedures), policies, claim forms, brochures, notices, providing liaison with other agencies, training employees, and provides services for other State agencies.

The office also reviews and approves all claims for Relocation payments on Mn/DOT projects.

## (b) LPA Projects

The State Aid Division for Local Government working through the Office of Land Management is responsible for ensuring through the District Offices that LPA's have relocation advisory services information.

## (2) District/Metro Division Offices

(a) Relocation services will be provided on Mn/DOT projects by relocation advisors located in each office with guidance given by the Relocation Manager.

(b) Relocation services will be provided on LPA projects by the LPA with guidance given by the District/Metro Offices.

**401.4 DEFINITION OF TERMS**a. **Agency**

The term "Agency means the Federal agency, State, State agency, or person that acquires real property or displaces a person (see 401.4G).

- (1) Federal agency. The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, and wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under federal law.
- (2) State agency. The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.
- (3) Lead agency. The term "lead agency" means the U.S. Department of Transportation acting through the Federal Highway Administration.
- (4) Acquiring agency. The term "acquiring agency" means a State agency, as defined above, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of 49 CFR 24. 101 (a) (1), (2), (3), or (4) need not provide the assurances required by 49 CFR 24.4(a) (1) or (2).
- (5) Displacing agency. The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.
- (6) Acquiring Authority includes:
  - (a) the state and every public and private body and agency thereof which has the power of eminent domain; and
  - (b) any acquiring authority carrying out an area wide systematic housing code enforcement program.

(Note: M. S. §117.52 requires relocation assistance regardless of Federal participation.)

**b. Appraisal**

The term "appraisal" means a written statement independently and impartially prepared by a licensed qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information utilizing standard appraisal practices.

**c. Business**

The term "business" means any lawful activity, except a farm operation, that is conducted:

- (1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or
- (2) Primarily for the sale of services to the public; or
- (3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
- (4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

**d. Comparable Replacement Dwelling**

The term "comparable replacement dwelling" means a dwelling which is:

- (1) Decent, safe, and sanitary as described in 401.4f.
- (2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See 49 CFR 24 Appendix A for examples of functionally equivalent trade-offs).
- (3) Adequate in size to accommodate the occupants;
- (4) In an area not subject to unreasonable adverse environmental conditions;
- (5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment.
- (6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. [See also 405.1.D(2)]
- (7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See 49 CFR 24 Appendix A); and

- (8) Within the financial means of the displaced person.
  - (a) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in 405.1C, all increased mortgage interest costs as described at 405.3 and all incidental expenses as described at 405.4, plus any additional amount required to be paid under last resort housing (407).
  - (b) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this section, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at 405.8B.
  - (c) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under Replacement housing of last resort (407).
- e. **Contribute Materially**

The terms "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

  - (1) Had average annual gross receipts of at least \$5,000; or
  - (2) Had average annual net earnings of at least \$1,000; or
  - (3) Contributed at least 33-1/3 percent of the owner's or operator's average annual gross income from all sources.
  - (4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.
- f. **Decent, Safe, and Sanitary Dwelling**

The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling shall:

  - (1) Be structurally sound, weather tight, and in good repair.
  - (2) Contain a safe electrical wiring system adequate for lighting and other devices.
  - (3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 EF 20EC) for a displaced person, except in those areas where local climate conditions do not require such a system.

- (4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and property connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, property connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.
- (5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.
- (6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

g. **Displaced Person**

- (1) General. The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property: (The includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements described at 405.1A and 405.7A.
  - (a) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.
  - (b) As a direct result of rehabilitation or demolition for a project; or
  - (c) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under 403.4, and moving expenses under 404.1, 404.2, 404.3, 404.4, 404.5 and 404.6.
- (2) Persons not displaced. The following is a nonexclusive listing of persons who do not qualify as a displaced person under these regulations.
  - (a) A person who moves before the initiation of negotiations (see also 405.1G) unless the Agency determines that the person was displaced as a direct result of the program or project;
  - (b) A person who initially enters into occupancy of the property after the date of its acquisition for the project;
  - (c) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;
  - (d) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see also Appendix A of the 49 CFR Part 24).
  - (e) An owner-occupant who moves as a result of an acquisition as described at 49 CFR 24.101 (a)(1) and (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this section)

- (f) A person who the Agency determines is not displaced as a direct result of a partial acquisition;
- (g) A person who, after receiving a notice of relocation eligibility (described at 403.1 B), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;
- (h) An owner-occupant who voluntarily conveys his or her property, as described at 49 CFR 24.101(a)(1) or (3), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to this section;
- (i) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;
- (j) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; except that such owner remains a displaced person for purposes of Section 404 of this part , or
- (k) A person who is determined to be in unlawful occupancy (defined at x.) or a person who has been evicted for cause, under applicable law, as provided for in 403.4

h. **Dwelling**

The term "dwelling means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home or any other residential unit.

i. **Farm Operation**

The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

j. **Family**

The term "family" means two or more persons living together in a single family dwelling unit who are:

- (1) related by blood, adoption, marriage or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit, or
- (2) are not related by blood or legal ties but live together by mutual consent.

k. **Federal Financial Assistance**

The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

l. **Initiation of Negotiations**

Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

- (1) Whenever the displacement results from acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.
  - (a) Notice of intent to acquire or notice of eligibility for relocation assistance. Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.
- (2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.
- (3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

m. **Mortgage**

The term "mortgage" means such classes of liens as are commonly given to secure advances, on or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

n. **Nonprofit Organization**

The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a State as a non-profit organization and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

o. **Owner of a Dwelling**

A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

- (1) Fee title, a life estate, a land contract, a 99-year lease, or a lease, including any options for extension with at least 50 years to run from the date of acquisition; or
- (2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

- (3) A contract to purchase any of the interests or estates described in (1) or (2) above, or any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.
- p. **Person**  
The term "person" means any individual, family, partnership, corporation, or association.
- q. **Program or Project**  
The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines. It also means such activities undertaken by any acquiring agency which has the power of eminent domain.
- r. **Salvage Value**  
The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable component and scrap when there is no reasonable prospect of sale except on that basis.
- s. **Small Business**  
A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites operated solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of 404.9.
- t. **State**  
The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, or a political subdivision of any of these jurisdictions.
- u. **Tenant**  
The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.
- v. **Uneconomic Remnant**  
The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring Agency has determined has little or no value or utility to the owner.
- w. **Uniform Act**  
The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894;42 U.S.C. 4601 et seq.:Pub. L. 91-646), and amendments thereto.

x. **Unlawful Occupancy**

A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing Agency may, at its discretion, consider such a squatter to be in lawful occupancy.

y. **Utility Costs**

The term "utility costs" means expenses for heat, lights, water and sewer.

z. **Utility Facility and Utility Relocation**

The term "utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned. The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing Agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right of way or new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

**NOTE: In Mn/DOT the Utilities Section handles facility relocation.**

**401.5 NO DUPLICATION OF PAYMENTS**

No person shall receive any payment under this section if that person receives a payment under Federal, State or local law which is determined by the Agency to have the same purpose and effect as such payment under this section.

**401.6 MANNER OF NOTICE**

Each notice which the Agency is required to provide to a property owner or occupant under this section, shall be **personally served or sent by certified or registered first-class mail**, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. The notices required are:

- ! **General Information Notice (Brochure)**
- ! **Notice of Relocation Eligibility**
- ! **Ninety Day Notice (Notice to vacate letter)**

#### 401.7 FEDERAL AGENCY WAIVER OF POLICY

The federal agency funding the project may waive any requirement in this section not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this section. Any request for a waiver shall be justified on a case-by-case basis.

#### 401.8 RECORD KEEPING AND REPORTS

1. **Records** All records maintained by the Agency in accordance with these procedures are confidential regarding their use as public information, unless applicable law provides otherwise.

- ! Records shall be kept with sufficient detail to demonstrate compliance with this policy.

- ! All records will be retained for at least 3 years from the date final voucher for the project is submitted.

- ! Mn/DOT offices will ensure that their current records are being properly administered using a chronological record sheet for all contacts.

- ! Mn/DOT offices will secure and record proper documentation for all related services and claims.

2. **Reports** The Relocation Manager will prepare those reports of displacement activities required by the FHWA and/or Mn/DOT management with input from Mn/DOT District/Metro Division Offices.

Reports required but are not limited to:

- ! Federal Uniform Relocation Assistance and Real Property Acquisition Statistical report form due October 30 each year.

- ! Relocation appeals.

- ! Monthly relocation activities reports.

**RELOCATION ASSISTANT PROGRAM (5-491.400)**  
**RELOCATION PLANNING (5-491.402)**

**402.1 POLICY**

It is important that proper analysis of all proposed acquisitions be reviewed and documented as related to potential displacements.

Mn/DOT will use relocation program plans to assist in the preparation of;

- ! environmental documents
- ! to develop acquisition cost estimates, and to;
- ! help estimate the lead time needed to provide adequate relocation services.

**402.2 RELOCATION IMPACT INFORMATION**

Relocation information should be summarized in sufficient detail to adequately explain the relocation situation including anticipated problems and proposed solutions. Project relocation documents from which information is summarized should be referenced in the draft EIS. Secondary sources of information such as census, economic reports and contact with community people, supplemented by visual inspections may be used to obtain the data for this analysis. Where a proposed project will result in displacements, the following information regarding households and businesses should be discussed for each alternative under consideration commensurate with the level of impacts and to the extent they are likely to occur.

1. An estimate of the number of households to be displaced, including the family characteristics (e.g., minority, ethnic, handicapped, elderly, size, income level, and owner/tenant status). However, where there are very few displacees, information on race, ethnicity and income levels should not be included in the EIS to protect the privacy of those affected.
2. A discussion comparing available decent, safe, and sanitary (DSS) housing in the area with the housing needs of the displacees. The comparison should include (a) price ranges, (b) sizes (number of bedrooms), and (c) occupancy status (owner/tenant).
3. A discussion of any affected neighborhoods, public facilities, nonprofit organizations, and families having special composition (e.g., ethnic, minority, elderly, handicapped, or other factors) which may require special relocation considerations and the measures proposed to resolve these relocation concerns.
4. A discussion of the measures to be taken where the existing housing inventory is insufficient, does not meet relocation standards, or is not within the financial capability of the displacees. A commitment to last resort housing should be included when sufficient comparable replacement housing may not be available.
5. An estimate of the numbers, descriptions, types of occupancy (owner/tenant), and sizes (number of employees) of businesses and farms to be displaced. Additionally, the discussion should identify (a) sites available in the area to which the affected businesses may relocate, (b) likelihood of such relocation, and (c) potential impacts on individual businesses and farms caused by displacement or proximity of the proposed highway if not displaced.
6. A discussion of the results of contacts, if any, with local governments, organizations, groups, and individuals regarding residential and business relocation impacts, including any measures or coordination needed to reduce general and/or specific impacts. These contacts are encouraged for projects with large numbers of relocatees or complex relocation requirements. Specific financial and incentive programs or opportunities (beyond those provided by the Uniform Relocation Act) to residential and business relocatees to minimize impacts may be identified, if available through other agencies or organizations.
7. A statement that: (a) the acquisition and relocation program will be conducted in accordance with the

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and (b) relocation resources are available to all residential and business relocatees without discrimination.

### 402.3 RELOCATION PLANNING

During the early stages of development, all programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

- (1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.
- (2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.
- (3) An estimate of the number, type and size of the businesses, farms, and nonprofit organization to be displaced and the approximate number of employees that may be affected.
- (4) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating agencies.

### 402.4 RELOCATION PLANNING PROCEDURES

#### 1. Environmental Relocation Study

- (a) The District/Metro Division R/W Office will prepare a relocation survey or study for use in the environmental documents. The office shall prepare a study or have a study prepared by a consultant of each alternate location under consideration for highway improvement. An estimate will be made considering (1) thru (4) above in 402.3. Official guidance for preparing environmental impact statements is found in FHWA Tech. Advisory T6640.8A dated 30 October 87. The study will be accomplished by visual inspection, newspaper ads, consulting local real estate firms, mortgage finance institutions and any other possible source of information. A projection of the availability of housing to the anticipated year of right of way acquisition and any alternate plans considered for rehousing displacees will be made. Any relocation problems anticipated will be noted and a reasonable solution will be formulated. Examples of this are competing displacement, subsidizing housing, sensitive groups, etc.
- (b) When an EIS is prepared by a consultant the District R/W relocation personnel must be involved for proper inclusion and concurrence on relocation issues.

#### 2. Detailed Relocation Study

- (a) The District/Metro R/W Office will prepare a detailed relocation study and submit it to the Relocation Manager. Prior to acquisition an in-depth study will be made of the individual families, businesses, and farms that will be displaced and their individual needs will be noted. This study will be project wide or for individual parcels. Personal interviews will be made with as many of those to be displaced as possible. Housing relocation information forms or commercial information sheets will be completed on each contact. The information obtained by these interviews will be used in determining the needs of those to be displaced. Special problems will be noted and possible solutions will be formulated.

- (b) On projects where advanced acquisition is necessary this will be done on an individual basis. An investigation will be conducted to determine the amount of available housing in the general areas by visual inspection, newspapers, real estate firms, rental agencies, etc.
- (c) On projects where problems appear to exist, OLM and the District/Metro Division office will work together to accomplish relocation.

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**GENERAL RELOCATION REQUIREMENTS (5-491.403)**

#### **403.1 RELOCATION NOTICES POLICY**

**A. General Information Notice (Relocation Brochure)**

As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the relocation program which does at least the following:

- (1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
- (2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.
- (3) Informs the person that he or she will not be required to move without at least 90 days advance written notice, and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.
- (4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this section.

**B. Notice of Relocation Eligibility**

Eligibility for relocation assistance shall begin on the date of initiation of negotiations for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

**C. Ninety Day Notice**

Ninety day notices shall conform to the following:

- (1) **General.** No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.
- (2) **Timing of notice.** The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.
- (3) **Content of notice.** The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available.
- (4) **Urgent need.** In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

#### **403.2 RELOCATION NOTICES PROCEDURE**

**1. Notice of Intent to Acquire**

This official notice is used to preserve eligibility for relocation benefits. In unusual circumstances, where there is a need to vacate property or relocate persons before the initiation of negotiations, the Agency may issue a **notice of intent to acquire** which will serve the same function as the initiation of negotiations for the then-current occupant.

- (a) District submits request and documentation to the Director, Office of Land Management.
- (b) Notice must be approved by the Director, Office of Land Management.
- (c) Notice will be mailed from OLM with copy to District Metro Division R/W office.  
Note: This notice must be personally served or sent by certified mail.
- (d) Notice can only be utilized after the highway location has been established by appropriate environmental approvals.
- (e) Additional requirements for notice of intent to acquire:
  - ! This notice, along with the brochure shall be furnished to owners and tenants when Mn/DOT determines to establish eligibility for relocation benefits prior to the initiation of negotiations for acquisition of the parcel. When a notice of intent to acquire is issued, it will be considered, for the purposes of this section, to be the same as the date of initiation of negotiations for the parcel.
  - ! The notice shall contain the statement of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property and how additional information pertinent to relocation assistance payments and services can be obtained.
  - ! If a notice of intent to acquire is furnished an owner, it must also be furnished to all tenants of record promptly, together with all other parties known to have an interest.
  - ! If a notice of intent to acquire is furnished a tenant, the owner must be simultaneously notified of such action together with all other parties known to have an interest used only in very unusual situations. (certified mail).

## 2. **The Relocation Brochure**

(General Information Notice) will be prepared and be made available by the Relocation Manager.

- (a) The brochure will be available as a handout at all public hearings.
- (b) Whenever possible, the potential displacee will be identified. The district relocation office will document their files when he/she receives a brochure.

## 3. **Relocation Eligibility**

(Notice of relocation eligibility) will be stated in the written offer letter or letter of intent. When it is sent by certified mail or personal delivery the purchasing agent must list all tenants who are potential displacees. The eligibility notice should be given to all interested parties within 30 days after the offer to purchase is made to the owner of record.

- (a) The purchasing agent will ensure that the owner receives a relocation brochure.
- (b) The Relocation Manager after receiving notification of an offer being made will mail a brochure and eligibility letter (certified mail) to those tenants listed.

## 4. **Vacation Date** (Ninety-day notice after direct purchase).

- (a) The Direct Purchase Unit will establish the vacation date and notify the Relocation Manager. In most cases the vacation date will be 120 days after acceptance of the owners offer to sell (49CFR Part 24.203(c) requires minimum 90 days.)
- (b) The Relocation Manager will promptly notify all eligible tenants of the vacation date. A relocation brochure will also be mailed. Again, this must be done by certified mail, personally served, or registered 1st class mail return receipt requested.
- (c) The district relocation advisors will insure that all eligible residential owners and tenants have been provided at least one comparable replacement dwelling at least 90 days prior to the required vacation date.

**5. Ninety-Day Notice under Eminent Domain Procedures**

- (a) In quick take condemnation the Legal and Real Estate Conveyance Unit will serve interested parties a notice of intent to take early title and take possession and provide the notice to vacate. This is served to all interested parties a minimum of 90 days prior to the title and possession date.
- (b) In regular condemnation the Legal and Real Estate Conveyance Unit will provide the vacate notice.

**6. Notices Generally**

- (a) All notices required to be given by the relocation policy must be timely and easily understood. All notices must be documented.

**403.3 AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT POLICY****A. General**

No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person if:

- (1) The person is informed of its location; and
- (2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- (3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease for the property.

**B. Circumstances Permitting Waiver**

The federal agency funding the project or the state agency (state funded project) may grant a waiver of the policy in paragraph A. "General" above in any case where it is demonstrated that a person must move because of:

- (1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or
- (2) A presidentially declared national emergency; or
- (3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

**C. Basic Conditions of Emergency Move**

Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph B. "Circumstances Permitting Waiver" above, the Agency shall:

- (1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and
- (2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and
- (3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied

dwelling.)

#### 403.4 RELOCATION ASSISTANCE ADVISORY SERVICES POLICY

##### A. General

The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph B. If the Agency determines that a person occupying property adjacent to the real property acquired for the project has been caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

##### B. Services To Be Provided

The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

- (1) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.
- (2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in 403.3
  - (a) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.
  - (b) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.
  - (c) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This regulation, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
  - (d) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.
- (3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.
- (4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.
- (5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced, and technical help to persons applying for such assistance.
- (6) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

**C. Coordination of Relocation Activities**

Relocation Activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

**403.5 RELOCATION ASSISTANCE ADVISORY SERVICES PROCEDURES**

1. The relocation advisor will provide all necessary services needed to carry out intent and purpose of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended.
2. Important; all contacts or attempted contacts must be documented on the displacee record sheet. This includes all written, verbal or personal contacts made with the displacee or on behalf of the displacee.
3. All contacts, services and claims provided will be documented on a displacee record sheet. A complete record will be submitted to the Relocation Manager when the individual district file is considered to be closed.

**403.6 EVICTION FOR CAUSE POLICY**

- A. Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

- ! The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- ! The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
- ! In either case the eviction was not undertaken for the purpose of evading the obligation make available the payments and other assistance set forth in this part.

NOTE: For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

**403.7 GENERAL REQUIREMENTS; CLAIMS FOR RELOCATION PAYMENTS POLICY****A. Documentation**

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

**B. Expeditious Payments**

Mn/DOT will review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

C. **Advance Payments**

If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, Mn/DOT shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished. Affidavits are required to help ensure safeguards.

D. **Time for Filing**

All claims for a relocation payment shall be filed within 18 months after:

- (1) For tenants, the date of displacement;
- (2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later. This time period may be waived for good cause.

E. **Multiple Occupants of One Displacement Dwelling**

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by Mn/DOT, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if Mn/DOT determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

F. **Deductions from Relocation Payments**

Mn/DOT shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Mn/DOT will deduct from relocation payments any rent that the displaced person owes Mn/DOT, provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by 403.3. Mn/DOT shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any creditor.

G. **Notice of Denial of Claim**

If Mn/DOT disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, the claimant shall be promptly notified in writing of the determination, the basis for the determination, and the procedures for appealing that determination.

H. **Ineligible Move**

A person cannot receive relocation payments if they move to another location on a current state project or project under threat of condemnation by other agencies. This may be waived at the discretion of the Director, Office of Land Management.

#### **403.8 RELOCATION PAYMENTS NOT CONSIDERED AS INCOME POLICY**

No relocation payment received by a displaced person under this section shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as Internal Revenue Code of 1986, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

However, if payments cause one's resources to exceed \$2000 for individuals or \$3000 for couples, SSI benefits may be lost. In purchase of residence, SSI recipient must purchase replacement home within three months or payment will be considered "resources". Please review with the appropriate Social Security office.

**403.9 LISTING OF TYPES OF RELOCATION PAYMENTS**

1. **Owner-occupant of more than 180 days.**
  - ! Moving expenses
  - ! Price differential payment or rental assistance
  - ! Increased Mortgage Interest payment
  - ! Incidental expenses for replacement dwelling (closing costs for new property)
  - ! Acquisition incidental expenses for displacement dwelling
  - ! Appraisal fees
  
2. **Owner-occupant of 90 days or more but less than 180 days.**
  - ! Moving expenses
  - ! Rental or down payment assistance which may include incidental expenses for replacement dwelling
  - ! Acquisition incidental expenses for displacement dwelling
  - ! Appraisal fees
  
3. **Tenants of 90 days or more.**
  - ! Moving expenses
  - ! Rental or down payment assistance which may include incidental expenses for replacement dwelling.
  
4. **Occupants of less than 90 days -- owners or tenants.**
  - ! Moving expenses
  - ! Possible appraisal fees
  - ! Possible acquisition incidental expenses
  - ! Possible rental assistance
  
5. **Business, farms and non-profit organizations**
  - ! Moving expenses, actual or fixed payment
  - ! Searching costs
  - ! Actual direct losses of tangible personal property
  - ! Reestablishment expenses
  
6. **Advertising signs**
  - ! Moving costs or the depreciated reproduction cost of the sign as explained
  - ! Searching costs

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**PAYMENT FOR MOVING AND RELATED EXPENSES (5-491.404)**

**404.1 PAYMENT FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES-RESIDENTIAL MOVES POLICY**

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined in 401.4g) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

- A. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
- B. Packing, crating, unpacking, and uncrating of the personal property.
- C. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- D. Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- E. Insurance for the replacement value of the property in connection with the move and necessary storage.
- F. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonable available.
- G. Other moving-related expenses that are not listed as ineligible under 404.11 as the Agency determines to be reasonable and necessary.

**404.2 PAYMENT FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES-RESIDENTIAL MOVES PROCEDURES**

- 1. To obtain payment, a displacee must file a written claim on Mn/DOT approved forms and filed in accordance with 403.7.
- 2. Payment will be made after the move unless other arrangements are justified. (403.7C)
- 3. By written prearrangement between the Mn/DOT and the displacee, payment may be made directly to the mover or to both the displacee and the mover.
- 4. Claims made for moves done by commercial movers must be supported by receipted bills and/or other evidence of costs incurred.
- 5. A self move must be supported by receipted bills, itemized statements, and/or other evidence of expenditure. The hourly rate claimed by the displacee must be reasonable and be based upon the type of work performed. For example, a \$30 professional doing \$12/hour labor work will be paid \$12/hour. An itemized affidavit is recommended.
- 6. In unusual cases, Mn/DOT may have estimate(s) prepared for the purpose of determining reasonableness of a self move. A payment based solely on such estimate or the lower of two estimates is not allowed under residential procedures.

7. With the exception of moves paid on a schedule basis, displacees may be reimbursed for reasonable expenses for travel, meals, and lodging necessitated by the move. Such a claim must be approved in advance by the District/Division Right of Way Engineer. Such claims must be supported by receipted bills and/or other evidence of costs incurred.
8. Storage expenses must be approved by the District/Division Right of Way Engineer. When storage is allowed the extra handling costs will also be paid.

**404.3 FIXED PAYMENT FOR MOVING EXPENSES; RESIDENTIAL MOVES POLICY**

- A. Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an Agency at no cost to the person shall be limited to \$50.

**404.4 FIXED PAYMENT FOR MOVING EXPENSES; RESIDENTIAL MOVES PROCEDURE**

1. To obtain payment a displacee must file a written claim on Mn/DOT approved forms in accordance with 403.7
2. Payment will be made after the move unless other arrangements are justified. 403.7C.
3. Payments will be based on the number of rooms of personal property in the house. This, however, typically excludes bathrooms, closets, pantries, hallways, entrances or any unfurnished rooms or areas. A basement will be considered as one room unless it is partitioned into separate furnished rooms and does have a reasonable amount of furnishings. A garage, separate storage building or separate storage area will be counted as a room if they contain substantial amounts of personalty.
  - (a) The relocation advisor shall submit a room count with the claim.
  - (b) The advisor may allow extra rooms (based on unusual quantities of furniture or personal items) with an adequate explanation. If this results in excessive room counts the use of the schedule may not be appropriate. Actual cost method should then be considered.

Residential Moving expense and Dislocation Allowance Payment Schedule										
<u>The occupant provides furniture</u>										
Rooms:	1	2	3	4	5	6	7	8	Each additional room	
Amount	250	400	550	650	750	850	950	1050	100	
<u>The occupant does not provide furniture</u>										
Rooms:	1	Each additional room								
Amount:	\$250	\$35								

4. There may be times when a combination of room count and actual expenses are allowed. For instance the residential displacee might have an unusual item(s) to move (piano, satellite dish) and they move that item as an actual cost but use the room count for the typical home.

**404.5 PAYMENT FOR ACTUAL REASONABLE MOVING RELATED EXPENSES; NON-RESIDENTIAL MOVES POLICY****A. Eligible Costs**

Any business or farm operation which qualifies as a displaced person (defined at 401.4g) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

- (1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
- (2) Packing, crating, unpacking, and uncrating of the personal property.
- (3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at 404.5A(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site and modifications necessary to adopt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)
- (4) Storage of the personal property for a period not to exceed 12 months or a longer time period as determined by the Agency.
- (5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.
- (6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment shall be based on the remaining useful life of the existing license, permit, or certification
- (7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- (8) Professional services necessary for-
  - (a) Planning the move of the personal property;
  - (b) Moving the personal property; and
  - (c) Installing the relocated personal property at the replacement location.
- (9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.
- (10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
  - (a) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price): or
  - (b) The estimated cost of moving the item but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on the moving distance of 50 miles or 80 km).
- (11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- (12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

- (a) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
  - (b) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.
- (13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:
- (a) Transportation.
  - (b) Meals and lodging away from home.
  - (c) Time spent searching, based on reasonable salary or earnings.
  - (d) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.
- (14) Other moving-related expenses that are not listed as ineligible under 404.11 as the Agency determines to be reasonable and necessary.

**B. Notification and Inspection**

The following requirements apply to payments under this part:

- (1) The displacee shall be informed, in writing, of the requirements of paragraphs B(2) and (3) as soon as possible after the initiation of negotiations. This information should be included in the relocation information provided to the displaced person.
- (2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Agency may waive this notice requirement after documenting the file accordingly.
- (3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

**C. Self-Moves**

If the displaced person elects to take full responsibility for the move of the business or farm operation, a payment may be made for the person's moving expenses in an amount not to exceed the lower of two acceptable estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single estimate.

**D. Transfer of Ownership**

Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

## **404.6 PAYMENTS FOR NON-RESIDENTIAL MOVES PROCEDURES**

**A. Moving Payments**

- (1) Payments must be claimed on appropriate Mn/DOT forms in accordance with 403.7
- (2) Payment(s) will be made after the move unless other arrangements are made.
- (3) Advance arrangements must be made if payment is to be made to other parties.
  - (a) Request must be made in writing.
- (4) An advance written notice of the date of the move must be provided by the displacee.
  - (a) The relocation advisor will work with the displacee in establishing a moving date.
  - (b) The written requirement may be waived with proper documentation.
- (5) An inventory of items to be moved must be provided by the displacee prior to the move.
  - (a) The relocation advisor may assist in this preparation.
  - (b) The reasonable cost preparing a moving inventory may be compensated.
  - (c) The relocation advisor will monitor and document the move to the degree necessary to insure

that inventory was actually moved to the new location.

- (d) Adjustments will be made to the moving allowance if major fluctuations occur.
- (6) If the displacee desires, Mn/DOT will make a payment for the persons moving expenses in an amount not to exceed the lower of two acceptable estimates obtained by the relocation advisor. Such payment generally will not exceed the low estimate unless additional costs are documented as reasonable and necessary (examples--telephone service, alarm system, etc.). With this method the only documentation needed is proof that all personalty considered in the estimate was moved. If personal property was abandoned, sold or discarded with no direct hauling costs to the displacee, the moving payment will be adjusted to reflect, the actual personalty moved.
- (7) A payment for a low cost or uncomplicated move may be based on a single estimate. The cost of such a move would be less than \$5,000. The estimate could be made by a commercial mover or by a qualified state employee. A moving estimate prepared by a state employee must be approved by the District before it is offered to the displacee.
- (8) The relocation advisor will monitor all moves in accordance with the complexity of the move.
- (9) The displacee may elect to move by "actual reasonable moving costs".
  - (a) Prior to the move, the relocation advisor will advise the displacee to submit receipted bills, itemized statements, and/or other evidence of expenditure. (Itemized Statement should include, date(s), expenses, equipment, individuals, hourly rates, hours worked, mileage, etc.)
  - (b) Prior to the move the relocation advisor must assist and inform the displacee as to proper documentation and procedures.
  - (c) A self move must be supported by receipted bills, itemized statements, and/or other evidence of expenditure. The hourly rate claimed by the displacee must be reasonable and be based upon the type of work performed. For example, a \$30.00/hour professional doing \$12/hour labor work will be paid \$12/hour.
- (10) Modifications to personal property mandated by Federal, State or local law, code or ordinance which are necessary to reassemble or reinstall the personal property or adapt to the replacement structure, the replacement site, or the utilities at the replacement site are eligible for reimbursement under moving costs. The modifications authorized must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner. The expenditures for authorized modifications must be reasonable and necessary.
- (11) Storage expenses must be approved by the District. When storage is allowed, the extra handling costs will also be paid. All claims will be documented by receipted bills.
- (12) Reasonable costs of replacement value insurance is compensable. Typically movers have a blanket weight policy. Additional insurance can be reimbursed, but must be reasonable and monitored prior to incurring expenses.
- (13) The replacement site sometimes requires a license, permits, or certification in order to operate at a new location. Submit documents and receipts for reimbursement, based on a pro-rata basis.
- (14) Insurance for the replacement value of personal property being moved is encouraged. When insurance is not available, the agency may participate in the reasonable replacement value of loss, stolen or damaged goods or property moved.
- (15) Direct Loss of Tangible Personal Property Payment
  - (a) The relocation advisor will inform the displacee of the availability of this provision.
  - (b) Separate moving costs must be obtained for items under consideration.
  - (c) Discuss application of this procedure with the Relocation Manager.
- (16) Reprinting Expenses
  - (1) An inventory will be made of each item requested for reimbursement.
  - (2) Samples of each item (old and new) will be provided.
  - (3) Reimbursement will be prorated (based on existing inventory remaining).
  - (4) The remaining obsolete items may be disposed of by the Agency.

- (17) Searching Expenses. The displacee must provide a record of dates, locations, and hours spent in requested searching expenses. Mileage reimbursement is limited to the current allowable Federal IRS mileage rate. Receipted bills are needed for other associated incidental expenses. The persons incurring the searching expenses will be named and the hourly rate used will be documented and must be reasonable.
- (18) At times, there may be moving related expenses not previously listed and not considered ineligible. Questions for determination of reimbursement are to be directed to Relocation Manager.
- (19) When personal property is not removed, sold or traded in, the Relocation Advisor should secure a bill of sale transferring ownership to the agency and the file should be documented.

#### B. Emergencies

In emergencies (fires, explosions, etc.) and when moving estimates are unobtainable:

- (1) The move shall be monitored and written record kept of the items moved, men and materials used, the time involved and such other items considered pertinent to the situation. The complexity of the move will determine the extent of the monitoring effort.
- (2) All on-site monitoring records should be signed and acknowledged by the displacee on a daily basis. This information will be used as part of the documentation for the moving claim payment.

### **404.7 MOVING PAYMENTS FOR ADVERTISING SIGNS POLICY**

#### A. **Advertising Signs**

The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

- (1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or
- (2) The estimated cost of moving the sign, but with no allowance for storage.

### **404.8 MOVING PAYMENTS FOR ADVERTISING SIGNS PROCEDURES**

1. Outdoor advertising devices are personal property. However in certain situations for on premises signs, they may be purchased with the R/W.
  - ! On premise signs are those signs that are located on the property on which the business and/or related products advertised are located.
  - ! Off premise signs are those signs that are not located on the property on which the business and/or related products advertised are located.
  - ! Trademark signs are almost always treated as personal property.
2. The depreciated reproduction cost of signs may be established by the appraisal unit. In certain situations, the relocation advisor may hire a sign estimator to establish this value. The value will not be part of the certified appraisal value.
3. The District relocation advisor shall obtain cost estimates for moving the sign. The estimate shall be itemized and include dismantling, transportation (up to 50 miles max.), and re-erection on a replacement site.
4. The depreciated reproduction cost and the moving estimates will be reviewed by the District R/W Engineer.
5. Searching costs not to exceed \$1,000 may be added if applicable.
6. Claims will be paid following procedures in 403.7

**404.9 REESTABLISHMENT EXPENSES - NON-RESIDENTIAL MOVES POLICY****A. Eligible Expenses**

In addition to the payments available under 404.5, a small business, as defined in 401.4 s, farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

! Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

- (1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
- (3) Construction and installation costs, for exterior signing to advertise the business.
- (4) Provisions of utilities from right-of-way to improvements on the replacement site.
- (5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- (6) License, fees and permits when not paid as part of moving expenses.
- (7) Feasibility surveys, soil testing and marketing studies.
- (8) Advertisement of replacement location.
- (9) Professional services in connection with the purchase or lease of a replacement site.
- (10) Estimated increased costs of operation during the first two years at the replacement site, for such items as:
  - (a) Lease or rental charges,
  - (b) Personal or real property taxes,
  - (c) Insurance premiums, and
  - (d) Utility charges, excluding impact fees.
- (11) Impact fees or one-time assessments for anticipated heavy utility usage.
- (12) Other items that the Agency considers essential to the reestablishment of the business.

**B. Ineligible expenses.**

! The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

- (1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures.
- (2) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.
- (3) Interest on money borrowed to make the move or purchase the replacement property.
- (4) Payment to a part-time business in the home which does not contribute materially to the household income.

**404.10 PROCEDURES FOR REESTABLISHMENT EXPENSE PAYMENTS**

! Payments made under this part are to be scrutinized by the relocation advisor.

- (1) When repairs or improvement to the replacement property are made the supporting laws or ordinances must be cited.
- (2) Modifications of the replacement property must be supported by receipted bills and documented as to the necessity of the claim. Prior approval of the relocation advisor is required.
- (3) Claims for redecoration or replacement of surfaces must be reasonable and necessary. Prior approval of the relocation advisor is required.

- (4) A payment for estimated increased costs of operation at the replacement site must be supported by proper before/after comparisons. Costs are determined as of date of displacement.
- (5) Any other claims that are not specifically addressed in this part must have written prior approval from the Relocation Manager.
- (6) A change in the nature or type of business conducted at the replacement site does not affect eligibility for those actual, reasonable and necessary reestablishment expenses incurred by the small business operator.
- (7) The cost of constructing a new replacement building for the displaced small business, farm or nonprofit organization is considered a capital expenditure and is ineligible for reimbursement.
- (8) Costs for repairs, modifications, or improvements to the replacement real property due to the requirements of laws, codes or ordinances are limited to the \$10,000 maximum payment. Costs in excess of this limit cannot be reimbursed as a moving expense payment.

NOTE: All claims for this part will be paid on Mn/DOT approved forms and filed in accordance with 403.7.

#### **404.11 INELIGIBLE MOVING AND RELATED EXPENSES GENERALLY**

A displaced person is not entitled to payment for:

1. The cost of moving any structure or other real property improvements in which the displaced person reserved ownership. However, this rule does not preclude the computation under 405.1C. (4); or
2. Interest on a loan to cover moving expenses; or
3. Loss of goodwill; or
4. Loss of profits; or
5. Loss of trained employees; or
6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location; except as provided in 404.9 or
7. Personal injury; or
8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or
9. Expenses for searching for a replacement dwelling; or
10. Physical changes to the real property at the replacement location of a business or farm operation except as provided in 404.5A(3); and 404.9 or
11. Costs for storage of personal property on real property already owned or leased by the displaced person, unless the storage space was specifically leased for storage approved by the Agency.

#### **404.12 FIXED PAYMENT FOR MOVING EXPENSES - NON-RESIDENTIAL MOVES POLICY**

##### **A. Business**

A displaced business (except an outdoor advertising display business or a nonprofit organization) may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses and

actual reasonable reestablishment expenses. The payment shall equal the average annual net earnings of the business, as computed in accordance with paragraph e below, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determined that:

- (1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.
- (2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and
- (3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired and which are under the same ownership and engaged in the same or similar business activities.
- (4) The business is not operated at a displacement dwelling or site solely for the purpose of renting such dwelling or site to others.
- (5) The business contributed materially (see 401.4e) to the income of the displaced person during the 2 taxable years prior to displacement.
- (6) The business is not operated at the displacement site solely for the purpose of renting the site to others.

**B. Determining the Number of Businesses**

In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

- (1) The same premises and equipment are shared;
- (2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- (3) The entities are held out to the public, and to those customarily dealing with them, as one business; and
- (4) The same person or closely related persons own, control, or manage the affairs of the entities.

**C. Farm operation**

A displaced farm operation (defined at 401.4 i) may choose a fixed payment in lieu of the payment for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph e below, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

- (1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- (2) The partial acquisition caused a substantial change in the nature of the farm operation.

**D. Nonprofit organization**

A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, titles, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified

financial statements of financial documents required by public agencies.

**E. Average Annual Net Earnings of a Business or Farm Operation**

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the agency determines its satisfactory.

**404.13 FIXED PAYMENTS FOR MOVING EXPENSES - NON-RESIDENTIAL MOVES PROCEDURE**

1. Only legal businesses and nonprofit organizations that are registered are eligible for this payment.
2. Computation of annual net earnings is "0" even if there is a net loss in any given year. When computing the annual net earning, if any given year shows a net loss, the annual net earning is "0" for that year.
3. Owners of rental property are not eligible for this payment.
4. The only eligibility requirement for non-profit organizations is that the Agency agrees that it will experience a substantial loss of existing patronage (in this case, patronage means membership or clientele). The benefit amount is the same, but the method of calculating the payment is distinctively different. Payment to non-profit organizations is determined by the average annual gross revenue less administrative expense for two year period immediately preceding acquisition.
5. Business and farms take the average annual net income from the two year period immediately preceding displacement. The distinction between the time of acquisition and displacement will in most cases, prove to be inconsequential in the calculation of the payment. It should be noted, however, that in cases where long extension of possession periods are granted, the difference, in time between acquisition and displacement could change the two years on which the fixed calculation is based.
6. Farms are not required to have loss of substantial patronage nor are they subject to multiple location requirements. The fixed payment is limited to operations at the displacement site only. There's no specific requirements of personal property at displacement site. The farm must contribute materially to the operator's support, thereby eliminating home or hobby operations from being eligible for a fixed payment.
7. Payment must be claimed on the appropriate Mn/DOT approved form and filed in accordance with 403.7
8. The claim must be supported with appropriate documentation. The most acceptable documentation for business and farms are the federal tax forms.

**404.14 DISCRETION UTILITY RELOCATION PAYMENTS POLICY**

- A. Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see 401.4 y and z) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

- (1) The utility facility legally occupies state or local government property, or property over which the state or local government has an easement or right-of-way; and
  - (2) The utility facility's right of occupancy thereon is pursuant to state law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreements; and
  - (3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and
  - (4) There is no federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing Agency's program or project; and
  - (5) State or local government reimbursement for utility moving costs of payment of such costs by the displacing Agency is permitted by state statute.
- B. For the purposes of this part the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.
- C. A relocation payment to a utility facility owner for moving costs under this part may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing Agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See 49 CFR 24 Appendix A)

**NOTE: Utility payments under this part will be coordinated with the help and assistance of the utility section of Mn/DOT.**

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**REPLACEMENT HOUSING PAYMENT (5-491.405)**

**405.1 REPLACEMENT HOUSING PAYMENT FOR 180-DAY HOMEOWNER-OCCUPANTS POLICY**

A. **Eligibility**

A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

- (1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and
- (2) Purchases and occupies a decent, safe, and sanitary (DSS) replacement dwelling within 1 year after the later of (except the Agency may extend the one year period for good cause).
  - (a) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or
  - (b) The date the displacing Agency's obligation under 403.3 is met.
- (3) Rents and occupies a DSS dwelling within 1 year after the later of (a) and (b) above. However, the payment is limited to \$5,250 as determined in 405.8.

B. **Amount of Payment**

The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. The payment under this part is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

- (1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with C below; and
- (2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with 405.3 of this section; and
- (3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with 405.5 of this section.

C. **Price Differential**

- (1) Basic computation.

The price differential to be paid under paragraph B (1) above is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

- (a) The reasonable cost of a comparable replacement dwelling as determined.
- (b) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) Mixed-use and multifamily properties

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) Insurance Proceeds

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with the loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

(4) Owner retention of displacement dwelling

If the owner retains ownership for his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

- (a) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
- (b) The cost of making the unit a decent, safe, and sanitary replacement dwelling; and
- (c) The current fair market value for residential use of the replacement site unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site;
- (d) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

D. **Determining Cost of Comparable Replacement Dwelling**

The upper limit of replacement housing payment shall be based on the cost of a comparable replacement dwelling.

- (1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data. An obviously overpriced dwelling may be ignored.
- (2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.
- (3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.
- (4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

E. **Inspection of Replacement Dwelling**

Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined.

**F. Purchase of Replacement Dwelling**

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling; or
- (2) Purchases and rehabilitates a substandard dwelling; or
- (3) Relocate a dwelling which he or she owns or purchases; or
- (4) Constructs a dwelling on a site he or she owns or purchases; or
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- (6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

**G. Occupancy Requirements for Displacement or Replacement Dwelling**

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this section computation for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing Agency; or
- (2) Another reason, such as delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

**H. Conversion of Payment**

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a payment if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under 405.1A-C or 405.11.

**I. Payment After Death**

A replacement housing payment is personal to the displacee person and upon his or her death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

- (1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.
- (2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.
- (3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

**405.2 REPLACEMENT HOUSING PAYMENT FOR 180 DAY HOMEOWNER OCCUPANTS PROCEDURES****A. Price Differential**

The computations for 180 day homeowner-occupants will be made under the direction of the Relocation Manager.

- (1) The Relocation Manager will assign the price differential computation to a trained real estate professional and the study will be completed at the appropriate time.
- (2) The person making the computation will make a thorough interior and exterior inspection of the subject and note the important features of the property with photos as necessary. An interview sheet will be made or updated and special needs identified.
- (3) All listings used will be given the same inspection as noted in paragraph 2 including external photo of listings. Particular emphasis will be given to the prime listing (most comparable).
- (4) Listing prices shall be adjusted to the basis of a cash sale or cash to a mortgage (new or assumed). This may be done by a study of homes sold for cash or by discussion with the listing Realtors. Listing prices will not be adjusted if the decision cannot be fully supported at an appeal hearing.
- (5) Listings used will meet the definition of a comparable replacement dwelling.
- (6) The price differential computation form will be utilized to record specific information. If available MLS sheets with pertinent data will also be retained.
- (7) The maximum differential payment will be determined by subtracting the acquisition price of the displacement dwelling. The Relocation Manager may carve out exterior attributes from a displacement property as is appropriate. This may be done to eliminate hardship and in some instances, windfall payments. (See 405.1D(2)).
- (8) Carve-outs and/or value allocations will be required in certain situations; the Relocation Manager will review and make the determinations. Situations normally encountered and the method of handling are:
  - (a) Mixed use and multifamily properties. The acquisition price to use will normally be pro-rated as the owner-occupants' dwelling area is to the total building area. If unusual living area usage and/or structural conditions are encountered the Relocation Manager will decide what action to take.
    - (i) Listing used will be similar to subject -- i.e. fourplex to fourplex -- if possible. If not possible, then a lower density structure will be used -- i.e. triplex, or duplex.
    - (ii) The listing used must have a living unit comparable to the subject's living unit. (Comparable replacement dwelling.)
    - (iii) The comparable listing price will be pro-rated in the same manner as the subject.
    - (iv) If applicable, the value of the replacement dwelling purchased will be pro-rated to determine the payment to be made.
  - (b) Listings not comparable because they lack major exterior attributes of the displacement property.
    - (i) The Relocation Manager will decide what is a major exterior attribute. (Example; pole shed, extra garage, swimming pool, scenic view, etc.)
    - (ii) Subject values for major exterior attributes may be taken from the certified appraisal. If a value is not identified in the appraisal then the Relocation Manager may have the appraisal unit establish the value. All values will be identified and supported.
    - (iii) All values will be subtracted from the subject acquisitions value to establish the acquisition price to use in the computation.
  - (c) Partial acquisition takes farm home; farm is still an economic unit so owner occupant remains on farm.
    - (i) The acquisition cost of the farm house, residential attributes acquired and building site will be abstracted by the Relocation Manager.

- (ii) Construction cost of a new house meeting the requirements of comparable replacement housing, plus cost of other residential attributes acquired, plus estimated building site value will be used as the cost of the replacement dwelling.  
Construction cost new will consider:
  - ! Comparable size, equal quality, same number of rooms, bedrooms and baths.
  - ! Cost of supplying water, adequate sewage system, landscaping, etc.
  - ! Cost of garage, breezeway and porches if they were part of the displacement.
  - ! Only those amenities present in displacement home.
  - ! Allowance for contractor's profit if not included in other cost estimates.
- (iii) If supplemental amount exceeds \$22,500 then Last Resort Housing payment procedures will be followed.
- (d) Partial acquisition taking farm house and displacement. Will buy another farm.
  - (i) Perform step (c) (i) above to determine value of displacement dwelling.
  - (ii) Use listings of available homes and building sites most comparable to the displacement dwelling to determine the cost of comparable replacement house.
  - (iii) Compute Price Differential
- (e) Partial acquisition taking farm house. Farmer will discontinue farming.
  - (i) Perform step (c) (i) above to determine value of displacement dwelling.
  - (ii) Use listings of comparable dwellings in town or surrounding rural area to compute Price Differential.
- (9) Other displacement situations encountered:
  - (a) No replacement dwellings comparable or better than the subject available on the market.
    - (i) If displacee does not have to remain in immediate area use listing in nearby communities.
    - (ii) If displacee cannot move away because of employment (owns local business, doctor, etc.) then differential will be computed using procedure (8)(c)(ii) above (cost of new house minus acquisition price). This is only allowed under last resort procedures.
  - (b) Replacement homes adequate for displacement family are not available on the market; need more bedrooms because of family size. (The following is under Last Resort procedures.)
    - (i) Use listings that are otherwise comparable to subject and add cost to cure. Possible solutions would be the additional cost to:
      - ! Convert unused basement space to legal bedrooms
      - ! Remodel unused attic space into bedrooms
      - ! Build a bedroom addition
  - (c) If additional rooms or specified features are considered essential and price differential determination consideration will be given to adding features to the replacement home or abstracting value from the subject property. Cost effectiveness will be considered.

**B. Updating Price Differentials**

- (1) Will be made at the direction of the Relocation Manager.
- (2) Will generally be made when:
  - (a) Acquisition has been delayed and the listings are no longer available on the market
  - (b) Responding to an owner's appeal
- (3) Revised or updated differentials will not be presented to owners unless approved by the Relocation Manager.

**C. Approval of Price Differentials**

- (1) A first level review will be made and documented by the Relocation Manager.  
This review will consider the following:
  - (a) Proper application of procedures
  - (b) Choice of listings and availability on market
  - (c) Other items as are appropriate

- (2) The Relocation Manager will make final decision regarding amount to be offered home owners.

D. **Presentation of Price Differential**

- (1) Offer to owner by formal letter normally at initiation of negotiations
  - (a) Content of letter
    - (i) Amount of differential
    - (ii) Address of property(ies) used to compute the amount and that are available for purchase as replacement homes.
    - (iii) Procedure for appealing
    - (iv) Owner should acknowledge receipt of differential letter.
- (2) Explanation to owner
  - (a) If differential is based on a comparable DSS dwelling owner will be advised of the address of that dwelling and any others that are also comparable and available on the market.
    - (i) Owner must understand that the price differential is based on comparison with the home being acquired. It does not mean that his house is worth the same as the replacement dwelling used to compute the differential.
    - (ii) Owner will be advised that if the acquisition price is increased--the differential will be decreased accordingly so that the total does not exceed the amount necessary to acquire the comparable dwelling used to establish the differential.
    - (iii) If the asking price of the comparable was adjusted for cash the situation will be explained to the displacee.
  - (b) If the differential computation involved a carve-out, abstraction or pro-rating of the acquisition price a full explanation will be made of the process.
    - (i) The owner will also be advised as to how the actual payment may be affected depending upon the replacement purchased.
  - (c) If price differential is based on constructing a new home, the owner will be advised:
    - (i) The new home must meet State building codes and family DSS requirements.
    - (ii) The owner will be responsible to see that the builder completes and delivers a dwelling according to contract specifications. The Agency liability is limited to the payment of the differential.
    - (iii) Cost records must be maintained and presented with the claim for final payment. Value by appraisal will not be accepted. Progress payments may be allowed with proper documentation and approval of the Relocation Manager.
    - (iv) Owner is free to contract with any builder for construction of dwelling.
    - (v) Owner may contribute labor and/or materials if he chooses. The extent and the monetary value of such contribution must be specified in writing with both the Agency and the builder.

E. **Other Information Given To Owner**

- (1) Advise that before making purchase commitment that a DSS inspection needs to be made by displacing Agency. Replacement dwelling must be DSS in order to get a replacement housing supplement.
- (2) Displacee may purchase a non-DSS house and remodel/rehabilitate it to meet DSS standards. The price differential will be limited to the amount computed or actual costs incurred -- whichever is the lesser. The value of owner's time in the remodeling is a legitimate cost item.
- (3) However, costs incurred after acquisition of the replacement home for items other than DSS improvements are not allowed. (example: All price differential was not used in purchasing replacement home, displacee elects to install new carpet after acquisition, this cost is not allowed.)

- (4) Differential updates -- the differential amount will be re-evaluated if the listings used to compute it have been sold. Owner must make request.
- (5) Differential amount can be processed in advance to facilitate closing of replacement purchase.
- (6) Advise that the actual differential payment will be the lesser of:
  - (a) The differential amount determined by the Agency, or
  - (b) The difference between the price of the replacement home and the price paid for the home sold to the State.

F. **Claim For Payment.**

- (1) Advance payment
  - (a) Made to facilitate purchase of replacement property.
  - (b) Request must be in writing and be accompanied by a copy of the Earnest Money Contract or some other evidence of purchase and the regular claim form.
  - (c) Payment will be made to the displacee and closing and/or lending institution.
    - (i) Affidavit stating the payment will be returned if the purchase of home is not completed.
    - (ii) Advisor should attend closing to assist the displacee and to secure proper documentation.
  - (d) The replacement dwelling must be DSS. A DSS inspection sheet must be submitted with the payment request.
  - (e) An advance payment must be supported by final evidence of purchase and the actual purchase price. It is the responsibility of the Agent to monitor and secure all final documentation.
- (2) Payment after purchase (no advance made)
  - (a) Advisor should attend closing to assist the displacee and to secure proper documentation.
  - (b) Claim will be made on approved form.
  - (c) Claim will be supported by DSS inspection report, evidence that purchase was closed and verification by the relocation advisor that the property is occupied by the displacee.
  - (d) Actual amount of purchase price will be supported.
- (3) Progress payments
  - (a) Can be made if displacee is building a new home. Generally will only be allowed in those situations of farm displacements (need to build on remainder) or no comparable replacement housing is available on the market.
  - (b) Payment methods will be determined in advance and stated in an agreement between Agency and displacee before construction starts.
  - (c) Claims will be made on approved forms and supported by receipted bills or other evidence of costs incurred. Care needs to be exercised to assure that costs claimed are within the scope of the differential determination. Cost records must be maintained.
  - (d) A DSS inspection must accompany request for final payment.
- (4) Special considerations such as carve-outs, exterior attributes, betterments, and more amenities will be reviewed and appropriate comparisons made to ensure overpayments are not made.
- (5) A "housing relocation information sheet" must accompany claim request.

G. **All claims for this part must be filed in accordance with 403.7.**

**405.3 INCREASED MORTGAGE INTEREST COSTS POLICY**

The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under 405.1B (2). The payment shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs A-E below shall apply to the computation of the increased mortgage interest costs payment which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

- A. The payment shall be based on the unpaid mortgage balances on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buy down determination, the payment will be prorated and reduced accordingly. (See 49 CFR 24 Appendix A.) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
- B. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage whichever is shorter.
- C. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for a conventional mortgage currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
- D. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
  - (1) They are not paid as incidental expenses;
  - (2) They do not exceed rates normal to similar real estate transactions in the area;
  - (3) The Agency determines them to be necessary; and
  - (4) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this part.
- E. The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgages are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

**405.4 INCREASED MORTGAGE INTEREST COSTS PAYMENT PROCEDURES**

- 1. To obtain payment a displacement must file a written claim on forms provided by Mn/DOT in accordance with 403.7.
- 2. Payment will be computed on "Increased Mortgage Interest Cost" worksheet.
- 3. The district relocation advisor shall obtain the following information to document the computation.
  - (1) Old and new mortgage interest rates
  - (2) Old and new mortgage balances
  - (3) Old and new monthly payment for principal and interest
  - (4) Term of old and new mortgages (years and months; beginning and ending dates)
  - (5) Date of last mortgage payment made

4. All increased mortgage interest payment computations should be reviewed in OLM (unless adequate review can be accomplished in the District Office) before the amounts are submitted to the displacements.
5. The payment should be applied so that money is available at or near closing.
  - (1) To obtain a payment advance procedures of filing a claim must be followed. The warrant must be held in escrow (not by the displacements). The claim must be accompanied by the computation form. If the interest rate changes between the time the increased mortgage interest is computed and the closing date then it will be necessary to file an amended claim. If this results in a smaller payment, then any claims still pending will be adjusted to provide for a payback, or the displacee will have to reimburse the agency.
  - (2) The increased mortgage interest costs payment should be used to reduce the new mortgage, this should be fully explained to the displacee.
6. Types of Loans

There are various types of loans in the market and thus various types of loans that may need to be dealt with in calculating the MIDP. Among the most common types of loans and how they are to be handled are:

Conventional Loan: On a conventional loan, the final MIDP is based upon the principal balance, interest rate, and remaining term at the date of closing on the acquiring property.

Home Equity Loans: If there is a home equity loan, use the lesser of the mortgage balance on the date of acquisition or 180 days prior to the date of initiation of negotiations. Use the interest rate and monthly payment in effect for the lowest mortgage balance.

Mortgages with Balloon Payments: If the mortgage has a balloon payment, use the mortgage balance, interest rate and monthly payment amount that was in effect on the date of acquisition. The monthly payment is normally predicated on a term longer than the actual term of the mortgage, so the computed remaining term will be greater than the actual remaining term of the mortgage. Use of the computed remaining term will provide you with the appropriate MIDP.

Multiple Mortgages: If there is more than one mortgage, calculate the buydown by completing the computations for each mortgage using the terms of that mortgage. If there is an old second mortgage that has a higher interest rate than any available rate, the buydown amount will be 0, but you then add points to arrive at a MIDP; the points are still eligible even though the new mortgage is at a rate that does not exceed the old mortgage.

Variable Rate Mortgage: If the mortgage is a variable interest rate mortgage, use the mortgage balance, interest rate, and monthly payment amount that was in effect on the date of acquisition.

#### **405.5 INCIDENTAL EXPENSES; CLOSING COSTS POLICY**

The incidental expenses to be paid under 405.1 B(3) or 405.11 are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer, including:

- A. Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
- B. Lender, FHA, or VA application and appraisal fees.
- C. Loan origination or assumption fees that do not represent prepaid interest.

- D. Certification of structural soundness and termite inspection when required.
- E. Credit report.
- F. Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
- G. Escrow agent's fee
- H. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
- I. Such other costs as the Agency determines to be incidental to the purchase.

#### **405.6 INCIDENTAL EXPENSES; CLOSING COSTS PROCEDURES**

1. If there is no mortgage on the displacement property, the relocatee is not eligible for reimbursement of any costs associated with obtaining a mortgage.
2. If the mortgage on the replacement property is larger than the mortgage on the displacement property, reimbursement of costs shall be limited to a mortgage the size of the one that existed on the displacement property.
3. To obtain reimbursement, a displacee must file a written claim on forms provided by Mn/DOT. The claim must be supported by a copy of the closing statement and other such receipts as needed to support other costs. Claims must be filed in accordance with 403.7.

#### **405.7 REPLACEMENT HOUSING PAYMENTS-FOR 90 DAY OCCUPANTS POLICY**

##### **A. Eligibility**

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with 405.8, or down payment assistance, as computed in accordance with 405.11, if such displaced person:

- (1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and
- (2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:
  - (a) For a tenant, the date he or she moves from the displacement dwelling; or
  - (b) For an owner-occupant, the latter of:
    - (i) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or
    - (ii) The date he or she moves from the displacement dwelling.

#### **405.8 RENTAL ASSISTANCE PAYMENT POLICY**

##### **A. Amount of Payment**

An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

- (1) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling;

or

- (2) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

B. **Base Monthly Rental For Displacement Dwelling**

The base monthly rental for the displacement dwelling is the lesser of:

- (1) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. For an owner-occupant, use the fair market rent for the displacement dwelling. (For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or
- (2) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in the above paragraph. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.)
- (3) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.
- (4) (See Reverse Side)

C. **Manner of Disbursement**

A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by 405.1 I, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

## (4) TENANT INCOME - What is and what isn't

INCOME	WHAT IS	WHAT ISN'T	EXPLANATION
SALARIES (gross) including wages, overtime pay, tips, commissions, bonuses, net business income	X		A regular source of income
GOVERNMENT and other retirement, disability, unemployment benefits, worker's compensation, severance pay, veteran's benefits, etc.	X		Periodic income, also payments in lieu of income, examples: Social Security, veterans, railroad pensions, general disability, SSI, retirement, disability payments.
CHILD SUPPORT	X		If actually received, or count amount that is received, also would count regular gifts from a person not living in household.
ALIMONY	X		see child support.
Interest, dividends, and other net income of any kind from real or personal property.	X		reduced by costs if any
AFDC (Aid to Families of Dependent Children)	X	unless there is an amount specified for rent & utilities	use amount set for rent and utilities, if any for base rental 24.2(g) 24.402(b)(2)(iii)
Food Stamps, WIC		X	Prohibited by Federal Law
Housing Assistance unless such assistance would continue regardless of a relocation payment.		X	Will lose housing assistance if relocation payment is accepted, see 24.208
Student Financial Assistance & training programs, Ed. Grants, Books, tuition, etc.		X	specific purposes not intended for housing
All regular pay, special pay, allowances of a member of the Armed Forces, except pay for exposure to hostile fire.	X		Use funds designated for family use if the military member is away.
Payments for the care of foster children or foster adults		X	specific purpose also payments for care of adopted children
Medical assistance, including Medicare & Medicaid		X	specific purpose
Lump sum payments-inheritances, insurance, capital gains, and settlements for personal or property losses		X	not an ongoing, periodic source of income
Temporary, nonrecurring or sporadic income (including gifts)		X	see above
Preparation payments by foreign government for Nazi persecution		X	specific purpose unrelated to housing
Earnings of dependent children		X	Under 18, do not want to discourage employment for children; over 18 if full time student (except for head of household and spouse)
Any payment excluded by law		X	

**405.9 RENTAL ASSISTANCE PAYMENT PROCEDURES****A. Computation of Rental Assistance**

- (1) The relocation advisor assigned to a displacee will compute the rental assistance amount as soon as possible after initiation of negotiations on a parcel.
- (2) Mn/DOT forms will be used to document the computation.
- (3) Listings used will be inspected for comparability, DSS, etc.
- (4) Utility costs will be documented and given proper consideration so like rental situations are compared.
- (5) The three comparable method will be used to determine the maximum rent assistance amount. Adjustment to rental rate will be made if necessary for utilities, garages and furnishings.
- (6) The base monthly rent will be based on the previous three months rent paid to the owner. Refer to 405.8 B for base monthly rental requirements. The income of the displacee should be carefully analyzed to ensure a proper payment. Income from the family unit and from all sources must be considered, including baby sitting, tips, gifts, etc.
- (7) The district relocation advisor will prepare a market study to support any economic rent determinations needed.

This is to clarify the amount of payment eligible to a 180 day owner occupant who wishes to rent instead of purchasing a replacement dwelling. A rent supplement determination must be computed. The rent supplement study will be based on economic rent for the subject property (what the subject property would rent for, based on similar rental properties in the area) and comparable dwellings available also in the area. In most cases when this is done, the rent supplement determination will probably result in a ZERO supplement. However the rent supplement must also be computed on the displacee's income (30% of average household gross income).

**B. Approval of Rent Assistance Payment**

- (1) Assistance computations will be reviewed and approved by the District R/W Engineer.

**C. Presentation of Rental Assistance**

- (1) The rental assistance amount will be presented to the tenant/owner in writing.
- (2) The letter will give the address of the specific rental(s) used to compute the payment.
- (3) Advise tenant that the computed rent assistance sets the maximum payment. Payment will be limited to the actual replacement rent paid if less than the maximum allowance.
- (4) Advise tenant that if rent assistance is less than \$5,250 it will be paid in a lump sum unless payment is requested to be made in four annual installments. Advise tenant that if rent assistance is more than \$5,250 payment will be made in installments unless Mn/DOT determines it is prudent to make payment in one lump sum. The Relocation Manager will make the final decision.
- (5) Advise tenant that replacement housing must be DSS in order to qualify for the assistance payment.
- (6) Unusual situations regarding multiple occupants that go separate ways should be discussed with the Relocation Manager to ensure uniformity.

**D. Claim for Payment**

- (1) A claim for payment must be made on Agency approved forms in accordance with 403.7.
- (2) Claims must be supported with appropriate "before and after" rental receipts or rent verified and documented by the advisor.
- (3) The DSS inspection sheet must accompany the claim.
- (4) If rent assistance claims are paid on an installment basis the district relocation advisor is responsible to provide claim forms at the appropriate time so payments can be made as agreed.
- (5) Payment will be based on the amount the displacee actually pays to rent a replacement dwelling or the computed amount, whichever is less.
- (6) A "housing relocation information sheet" must accompany claim request.
- (7) Proof of eligibility must accompany claim request.

**405.10 EXAMPLES OF RENTAL ASSISTANCE WHERE 180 OWNERS/OCCUPANTS DECIDE TO RENT**

If the rent supplement determination is less than \$5,250.00 (not housing of last resort), the payment is limited to the rent amount determined in the rent supplement study, no matter what the price differential computation is.

Example #1 - If the price differential payment is \$3,000.00 and the rent supplement payment is \$4,000.00, the displacee would be eligible for a maximum payment of \$4,000.00.

Example #2 - If the price differential payment is \$25,000.00 and the rent supplement payment is \$3,000.00, the displacee would be eligible for a maximum payment of \$3,000.00.

If the rent supplement determination is housing of last resort (over \$5,250.00), and the price differential payment is less than \$5,250.00, the displaced person payment is limited to the maximum amount of \$5,250.00.

Example #3 - If the price differential payment is \$3,000.00, but the rent supplement payment is \$7,000.00 (housing of last resort), the displacee would be eligible for a maximum payment of \$5,250.00.

If the rent supplement is housing of last resort (over \$5,250.00) and replacement housing supplement determination is greater than \$5,250.00, the displaced person's payment is limited to the lesser of the two determinations.

Example #4 - The price differential payment is computed at \$10,000.00 and the rent supplement is computed at \$7,000.00, the displacee would be eligible for a maximum payment of \$7,000.00.

Example #5 - The price differential payment is computed at \$18,000.00 and the rent supplement is computed at \$20,000.00, the displacee would be eligible for a maximum payment of \$18,000.00.

**405.11 DOWN PAYMENT ASSISTANCE POLICY****A. Amount of Payment**

An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive as computed under rental assistance. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under 405.1B if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under 405.1A is not eligible for this payment.

**B. Application of Payment**

The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

**405.12 DOWNPAYMENT ASSISTANCE PROCEDURES****1. Computation of Down Payment**

- (a) Refer to rental assistance procedures.
- (b) The District will review and approve.

**2. Presentation of Down Payment**

- (a) Amount will be presented in writing.
- (b) Advise displacee that DSS required before purchase commitment.
- (c) Advise that if the down payment money must be available at closing then an advance payment can be made.
- (d) The maximum amount of down payment is limited to the amount computed for a rent supplement. (see note below)

**3. Claim for Payment**

- (1) A claim for payment must be made on Mn/DOT approved forms and filed in accordance with 403.7.
- (2) A DSS inspection sheet must accompany the claim.
- (3) A copy of the closing papers must accompany the claim.
- (4) The relocation advisor must verify that the dwelling unit is actually occupied as the replacement dwelling.
- (5) If an advance payment has been made then the necessary documentation must be filed to prove the propriety of the initial payment.
  - (a) All claims for advance down payment shall be made out to the displacee and the lender/closing agency.
  - (b) A copy of the purchase agreement must be sent with the request for advance payment.
  - (c) An affidavit must be signed by the displacee stating that the advance money will be returned if the purchase is not completed.
  - (d) Relocation advisor should attend closing to assist the displacee and secure property documentation.
- (6) A "housing relocation information sheet" must accompany claim request.
- (7) Proof of eligibility must accompany claim request.

NOTE: The rent supplement determination must be computed for **ALL** eligible displacees. If the rent supplement determination is less than \$5,250.00 and the displacee wishes to purchase a home, the displacee will be eligible for a maximum down payment of \$5,250.00.

To clarify, when a rent supplement determination exceeds \$5,250.00 (housing of last resort) and the displacee wishes to purchase a home, the down payment supplement is limited to the maximum amount determined by housing of last resort.

Example No. 1. - rent supplement determination is \$4,250. This amount would be documented and presented to the displacee in written form, but also advising the displacee that a down payment supplement is available and limited to a maximum amount of \$5,250.00.

Example No. 2. - rent supplement determination is \$8,500 (over \$5,250 - housing of last resort). The displacee wishes to purchase a home, the down payment assistance payment would be limited to a maximum of \$8,500.00.

**The term "down payment" means the down payment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the down payment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the down payment may be the amount which the Agency determines as necessary.**

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**MOBILE HOMES (5-491.406)**

**406.1 RELOCATION APPLICABILITY FOR MOBILE HOMES**

This section describes the requirements of relocation payments to a person displaced from a mobile home and/or mobile homesite meeting the basic eligibility requirements of this section. Except as modified by this section, such a displaced person is entitled to a moving expense payment and a replacement housing payment to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

**406.2 MOVING AND RELATED EXPENSES FOR MOBILE HOMES POLICY**

A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with 404.2. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under 404.5. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at 406.4C, the owner is not eligible for payment for moving the mobile home but may be eligible for a payment for moving personal property from the mobile home. The following rules apply to payments for actual moving expenses under 404.1 and 404.2.

- A. A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired, anchoring of the unit, and utility hook-up charges.
- B. If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be economically feasible to incur those expenses, the reasonable cost of such repairs and/or modifications is reimbursable.
- C. A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

**406.3 MOBILE HOME MOVING EXPENSE PAYMENT PROCEDURES**

- 1. A claim for moving costs must be made on Mn/DOT approved forms and filed in accordance with 403.7.
- 2. The moving of a mobile home is based on actual costs. At Mn/DOT's discretion, a reasonable amount may be added for packing and securing personal property.

**406.4 REPLACEMENT HOUSING PAYMENT FOR 180-DAY MOBILE HOMEOWNER OCCUPANTS POLICY**

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under 405.1 if:

- A. The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;
- B. The person meets the other basic eligibility requirements at 405.1A and;
- C. The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the

Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

- ! Is not and cannot economically be made decent, safe, and sanitary; or
- ! Cannot be relocated without substantial damage or unreasonable cost; or
- ! Cannot be relocated because there is no available comparable replacement site; or
- ! Cannot be relocated because it does not meet mobile home park entrance requirements.

- D. If the mobile home is not acquired, and the agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at 405.1C, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

#### **406.5 REPLACEMENT HOUSING PAYMENTS FOR 90-DAY MOBILE HOME OCCUPANTS POLICY**

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, under 405.7 if:

- a.. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
- b. The person meets the other basic eligibility requirements of 405.7 and;
- c. The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at 406.4C.

#### **406.6 ADDITIONAL RULES GOVERNING RELOCATION PAYMENT TO MOBILE HOME OCCUPANTS POLICY**

##### **A. Replacement Housing Payment Based on Dwelling and Site**

Both the mobile home and mobile homesite must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable part. However, the total replacement housing payment shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the part that governs the computation for the dwelling.

##### **B. Cost of Comparable Replacement Dwelling**

- (1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.
- (2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under 405.1C, the cost of a comparable replacement dwelling is the sum of
  - (a) The value of the mobile home;
  - (b) The cost of any necessary repairs or modifications; and

(c) the estimated cost of moving the mobile home to a replacement site.

C. **Initiation of Negotiations**

If the mobile home is not actually acquired, but the occupant is considered displaced under this section, the "initiation of negotiations" is the initiation of negotiations to acquire the land or, if the land is not acquired, the written notification that he or she is a displaced person under these policies.

D. **Person Moves Mobile Home**

If the owner is reimbursed for the cost of moving the mobile home under this section, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

E. **Partial Acquisition of Mobile Home Park**

The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this section.

#### **406.7 MOBILE HOME REPLACEMENT HOUSING PROCEDURES**

1. A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under 405.1 and a replacement housing payment for a site computed under 405.7. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under 405.1 to assist in the purchase of a replacement site or, under 405.7 to assist in renting a replacement site.
2. The basis process set forth in 405 will be used for the computation, approval, presentation and payment of replacement housing claims. Unusual situations must be discussed with the Relocation Manager prior to committing a replacement housing payment.
3. A claim for a replacement housing payment must be made on Mn/DOT approved forms and filed in accordance with 403.7. See 405.1 and 405.2 for documentation required and procedures for advance payments.

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**LAST RESORT HOUSING (5-491.407)**

**407.1 LAST RESORT HOUSING POLICY**

**A. Last Resort Housing Justification and Determination**

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in 405, the Agency shall provide additional or alternate assistance under the provisions of this part. Any decision to provide last resort housing assistance must be adequately justified.

- (1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
  - (a) The availability of comparable housing in the project or program area; and
  - (b) The resources available to provide comparable housing; and
  - (c) The individual circumstances of the displaced person; or
  
- (2) By a determination that:
  - (a) There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area; and, therefore last resort housing assistance is necessary for the area as a whole; and
  - (b) A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and
  - (c) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs. (Will project delay justify waiting for less expensive replacement housing to become available?).

**B. Basic Rights of Persons to Be Displaced**

Notwithstanding any provision of this part, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

**C. Methods of Providing Replacement Housing**

Agencies shall have broad latitude in implementing this part but implementation shall be for a reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project. The methods of providing last resort housing include, but are not limited:

- (1) A replacement housing payment in excess of the limits set forth in 405.1 or 405.7. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.
- (2) Rehabilitation of and/or additions to an existing replacement dwelling.
- (3) The construction of a new replacement dwelling.
- (4) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest free.

- (5) The relocation and, if necessary, rehabilitation of a dwelling.
- (6) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to or exchange with, a displaced person.
- (7) The removal of barriers to the handicapped.
- (8) The change in status of the displaced person (with his or her concurrence) from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort assistance payment.

**D. Under Special Circumstances, Modified Methods of Providing Housing of Last Resort Permit Consideration Of:**

- (1) Replacement housing based on space and physical characteristics different from those in the displacement dwelling. (See 49 CFR Appendix A.)
- (2) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent.
- (3) The Agency shall provide assistance under this part to a displaced person who is not eligible to receive a replacement housing payment because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under 405.1 to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of dwelling" at 401.4o. The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance. (The most common situation of fractional ownership encountered involves divorces. Agency purchase is not a voluntary sale situation. Our action must be related to the terms of the divorce decree. The displacee should obtain legal counsel to determine his/her rights to continued occupancy of a replacement dwelling. The relocation advisor should obtain a copy of the divorce decree and forward it to Central Office for review.)

**407.2 LAST RESORT HOUSING PROCEDURES**

1. The use of cost effective means of providing last resort replacement housing is implied throughout the regulation. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are allowed, they should be cost-effective.
2. Special cases may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

3. All claims will be made using state approved forms and filed in accordance with 403.7. These claims will be marked at the top "Last Resort Housing".

### CHARACTERISTICS

4. The housing of last resort (HLR) provision of the Uniform Act was designed to assure that comparable DS&S replacement housing could be made available to a displaced person when such housing could not otherwise be provided within the person's financial means.

There are three main characteristics that distinguish replacement housing of last report from the regular provisions for replacement housing:

- (a) Monetary Limits - There are no prescribed monetary limits to the amount of funds that can be used to undertake HLR. Once HLR is triggered, the agency may spend whatever is necessary to provide the needed housing. This does not mean, however, that HLR will cost more than a regular relocation, or that the agency is not constrained by the overall need to conserve public funds in the operation of its program. The agency should always look at a variety of options before it decides to make a "super payment" or involve itself in a costly, time-consuming project.
- (b) Administrative Procedures - The use of HLR is outside the scope of regular relocation activity and requires a special determination of need for its use. When the acquiring agency makes the determination that there is a reasonable likelihood that the project cannot be advanced to construction and completion in a timely manner because no comparable replacement dwelling will be available to persons to be displaced, the agency may, on a case-by-case basis, be authorized to take additional measures to provide the necessary housing. If there is a general lack of availability of replacement dwellings for the project or program, a last resort determination can be made for the entire project instead of for individual cases. Last resort determinations should be for good cause and carefully documented.
- (c) Methods - HLR enables the Agency to take direct action in the housing market; construct new houses, construct additions to existing houses, rehabilitate existing houses, work out special financing arrangements, etc. HLR authority permits the use of any method which is otherwise legal under state law and which will resolve the housing problem in a cost effective manner.

Innovative methods and broad latitude in the choice of methods are encouraged in the implementation of HLR. This program is intended to respond to unique and unusual housing needs, and in many cases the best solution may be the one that does not fit a common mold.

All cases of HLR should be discussed with the Relocation Manager to ensure appropriate application for uniform statewide standards.

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**APPEALS (5-491.408)**

**408.1 APPEALS POLICY****A. General**

The Agency shall promptly review appeals in accordance with the requirements of applicable law and this section.

**B. Actions Which May be Appealed**

A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine or consider the person's eligibility for, or the amount of, a payment required by this section. The Agency shall consider a written appeal regardless of form.

**C. Time Limit for Initiating Appeal**

The Agency may set a reasonable time limit for a person to file and appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

**D. Right to Representation**

A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

**E. Review of Files by Person Making Appeal**

The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

**F. Scope of Review of Appeal**

In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

**G. Determination and Notification After Appeal**

Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

**H. Agency Official to Review Appeal**

The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

**408.2 APPEALS PROCEDURES****1. Request for Review**

- a. A request for review is instituted by the aggrieved person directing a letter requesting such review to the Director, Office of Land Management, Minnesota Department of Transportation, Transportation Building, St. Paul, Minnesota 55155, stating the reasons he/she believes he/she is aggrieved.

- b. A request for review must be submitted not more than 90 days after the person received written notification of Mn/DOT's determination on the person's claim (See 403.7 D for time for filing claims).
- c. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.
- d. The Relocation Manager will attempt to resolve issues and explain rules and regulations to the grievant.

## 2. Review and Hearings

- a. The Director, Office of Land Management may further attempt to resolve a continuing grievance on the basis of new data which may be made available to him. Cases that cannot be resolved shall either be forwarded to a review officer appointed by the Commissioner of Transportation for investigation, review and recommendations, or help and assistance requested from the Attorney General's Office with possible Administrative Law Judge Proceedings.
- b. The reviewing officer will notify the claimant and Mn/DOT of the time and place of the hearing giving the parties the opportunity to be heard and to present any pertinent data to support their claims.

NOTE: The relocation advisor, at the request of the Relocation Manager, or his designee shall prepare, attend, and present testimony at the hearings.

- c. The reviewing officer shall make a written report and recommendation to the Commissioner of Transportation within 30 days after the conclusion of the hearing unless there are unusual circumstances.
- d. The Commissioner's decision will be transmitted in writing to the claimant. The notice shall also advise the person of his or her right to seek judicial review if full relief is not granted by the review.

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**RECORDS, REPORTS AND FORMS (5-491.409)**

**409.1 RECORDS , REPORTS AND FORMS POLICY****A. Record**

The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this section. These records shall be retained for at least 3 years after the final voucher for the project is submitted.

**B. Confidentiality of Records**

Records maintained by an Agency in accordance with this section are confidential regarding their use as public information, unless applicable law provides otherwise.

**C. Reports**

The Agency shall submit a report of its real property acquisition and displacement activities under this section if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause.

**409.2 STATISTICAL REPORT FORMS PROCEDURES**

- (1) **Report coverage** (See Attachment 1). This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.
- (2) **Report period.** Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1 - September 30, for the year in which the report is required.
- (3) **Where and when to submit report.** Submit an original and two copies of this report to the Federal Highway Administration as soon as possible after September 30, but not later than November 15, of the year in which the report is due.
- (4) **How to report relocation payments.** The full amount of a relocation payment shall be reported as if disbursed in the year during which the payment was approved, regardless of whether the payment is to be paid in installments.
- (5) **How to report dollar amounts.** Round off all money entries in Part B of the form to the nearest dollar.
- (6) **Statutory references.** The references in Part B indicate the section of the Uniform Act that authorizes the cost.

**Part A. Persons Displaced**

Report in Part A of the form, the number of persons ("households," "business, including nonprofit organizations," and "farms") who were permanently displaced during the report year by project or program activities and moved to their replacement dwelling or location. This includes business, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, not by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants"

of the property from which displaced.

### **Part B. Relocation Payments and Expense**

Columns (A) or (B). Report in Column (A) the number of claims approved during the report year. Report in Column (B) the total amount represented by the claims reported in Column (A).

Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in their total amount approved on Lines 6 and 8, Column (B).

Lines 12A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with part 407. Report in Column (B) the total financial assistance under part 407 allocable to the households reported in Column (A). (If a household received financial assistance under part 405, as well as under part 407, report the household as a claim in Column (A), but in Column (B) report only the amount of financial assistance allocable to Section 407. For example, if a tenant-household receives a payment of \$7,000 to rent a replacement dwelling, the sum of \$5,250 shall be included on Line 10, Column (B), and \$1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under 403.4.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

### **Part. C. Real Property Acquisition Subject to Uniform Act**

Line 16. Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

## **409.3 STATE FORMS**

### **Office Records**

- (1) 25333 -- Computation of Price Differential
- (2) 25343 -- Housing Relocation Information - (Interview sheet)
- (3) 25370 -- Replacement Housing Comparable Listing Sheet
- (4) 25380 -- D.S.S. Inspection Report
- (5) 25381 -- Residential Inventory and Room Count for Schedule
- (6) 25384 -- Notice of Direct Purchase Offer to Relocation Manager
- (7) 25385 -- Displacee Record Form
- (8) 25465 -- Computation of Increased Mortgage Interest Costs
- (9) -- Displacee Eligibility Form
- (10) 25375 -- Computation of Rent Supplement

**Displacee Notices**

- (1) 25141 -- 90 Day Notice Letter (Vacation Date)
- (2) 25400 -- Rent Assistance Offer
- (3) 25425 -- Tenant Eligibility Letter
- (4) -- Replacement Housing Price Differential Offer (various letters on file)
- (5) -- Direct Purchase Offer Letter (various letters on file)
- (6) -- Acquisition Information Booklet
- (7) -- Relocation Assistance Booklet

**Payment Claim Forms**

- (1) 25151 -- Commercial Moving Claim
- (2) 25152 -- Residential Moving Claim
- (3) 25334 -- Fixed Payment (non-residential) Claim (In Lieu)
- (4) 25335 -- Price Differential Claim
- (5) 25337 -- Rent Supplement or Down Payment Claim
- (6) 25393 -- Interest Differential Claim
- (7) 25399 -- Housing Incidental Expenses (closing cost)
- (8) 3033 -- Invoice Statement (misc.)
- (9) 25151R -- Reestablishment Costs Claim
- (10) 25189 -- Appraisal Reimbursement Claim
- (11) 25353 -- Acquisition Incidental Claim

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**ACQUISITION INCIDENTAL EXPENSES AND CERTAIN LITIGATION EXPENSES (5-491.410)**

**410.1 EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO THE AGENCY**

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

- (1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and
- (2) Penalty costs and other charges for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the real property; and
- (3) The pro rate portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**410.2 CERTAIN LITIGATION EXPENSES**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- (1) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or
- (2) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or
- (3) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceedings.

**410.3 CLAIM ASSISTANCE**

Relocation advisors and/or purchasing agents will assist property owners in submitting claims for the reimbursement of incidental expenses incurred in the transfer of their property to the Agency.

**410.4 PAYMENT APPROVAL**

The payment of incidental expenses and certain litigation expenses will be developed by the Direct Purchase Unit and reviewed by the Direct Purchase Supervisor and Relocation Manager who recommends payment approval to the Director, Office of Land Management.

**RELOCATION ASSISTANCE PROGRAM (5-491.400)**  
**APPRAISAL FEE REIMBURSEMENT TO PROPERTY OWNER (5-491.411)**

**411.1 APPRAISAL REIMBURSEMENT POLICY****A. Appraisal**

The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

**B. Direct Purchase**

When acquisition of private property is accomplished by direct purchase the owner shall be entitled to reimbursement for appraisal fees, not to exceed a total of \$500.

Note: This part does not apply to acquisition for utility purposes made by a public service corporation organized pursuant to M.S. §300.03 or electric cooperative associations organized pursuant to M.S. §308.05.

**C. Eminent Domain**

When acquisition of private property is through Eminent Domain, the Commissioners may in their discretion allow and show separate from the award of damages reasonable appraisal fees not to exceed a total of \$500 for each property owner.

**411.2 APPRAISAL REIMBURSEMENT PROCEDURES**

1. Purchasing agent shall inform owner of their right to reimbursement of reasonable appraisal fees (max. \$500).
2. If a relocation advisor is assigned the file he will also advise owner of the appraisal fee reimbursement procedures.
  - a. The reimbursement is not made until after the acquisition.
  - b. The appraisal must be an acceptable appraisal, not just an opinion or real estate agent evaluation.
  - c. District relocation advisor will assist owner with claim.
3. Report of Commissioners State Award:

The claim will be processed by the Relocation Manager after the report of commissioners gives authorization.

**PROPERTY MANAGEMENT (5-491.500)**

- 5-491.501 SALE OF BUILDINGS
  - .501.1 Introduction
  - .501.2 Authority
  - .501.3 Inventory of Buildings on Right of Way
  - .501.4 Responsibilities of District Right of Way Office
  - .501.5 Public Notice of Sale
  - .501.6 The Bid Form
  - .501.7 Sale Procedure
  - .501.8 After the Sale: Checking Progress of Building Removal
  - .501.9 Delay in Removing Buildings
  - .501.10 Sale of Equipment
  - .501.11 Owner-Retained Buildings
  - .501.12 Auction in Lieu of Bids
  - .501.13 Miscellaneous Considerations
  
- 5-491.502 LEASES
  - .502.1 Introduction
  - .502.2 Leasing Authority
  - .502.3 Procedure for Initiating a Lease
  - .502.4 Tenant
  - .502.5 Competitive Bidding (Lease to High Bidder)
  - .502.6 Rent
  - .502.7 General Provisions of Leases
  - .502.8 Standard Lease Forms
  - .502.9 Cancellation of Lease
  - .502.10 Procedure for Preparing a Lease
  - .502.11 FHWA Involvement
  - .502.12 Administration of Leases
  - .502.13 Leasing Out Highway Easement Land
  
- 5-491.503 PUBLIC SALE OF LAND BY BIDS
  - .503.1 Introduction
  - .503.2 Authority
  - .503.3 Public Notice of Sale
  - .503.4 The Bid Form
  - .503.5 Sale Procedure
  - .503.6 Action in Lieu of Bids
  
- 5-491.504 DEMOLITION OF BUILDINGS
  - .504.1 Introduction
  - .504.2 Building Records
  - .504.3 List of Buildings to Be Demolished
  - .504.4 Building Demolition Request Memo
  - .504.5 Procedure for Preparing Demolition Memo
  - .504.6 Sealing Water Wells
  - .504.7 Asbestos

- 5-491.505 TRANSFER OF SURPLUS PROPERTY
  - .505.1 Authority
  - .505.2 Transfer of Surplus Property to District Maintenance Office
  - .505.3 Transfer of Buildings or Surplus Property to Another State Agency or Political Subdivision or to the U.S. Government
  
- 5-491.506 (VACANT)
  
- 5-491.507 BUILDING REMOVAL STATUS REPORT
  - .507.1 Purpose
  - .507.2 Procedure
  
- 5-491.508 SALVAGE APPRAISALS
  - .508.1 Salvage Value of Buildings
  - .508.2 Comparable Sales File
  - .508.3 Use of Salvage Values
  - .508.4 Salvage Value of Certain Fixtures
  
- 5-491.509 LEASING FIELD OFFICES AND STORAGE SITES
  - .509.1 Authority
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## SALE OF BUILDINGS

### 501.1 INTRODUCTION

When the State of Minnesota, Department of Transportation (Mn/DOT) acquires land for a proposed highway project, the lands may include buildings. Prior to the highway project the buildings will have to be removed. Not all of these buildings need be demolished; some can be sold and then moved off the new right of way, to be used elsewhere.

If Mn/DOT is able to sell any of these buildings, it gains the income from the sale and also saves the cost of demolition. Another less tangible benefit is the public perception that housing is being saved for use elsewhere instead of being destroyed.

Whether a building is offered for sale will usually depend on its condition and moveability. For example, some factory-built metal buildings can be readily taken apart and moved off the right of way. In contrast, masonry buildings and very large houses usually do not justify the cost of moving. If, however, there is a reasonable chance of selling a building, an attempt to sell it should probably be made for the reasons given above.

Although this section of the manual is titled "Sale of Buildings," the "buildings" being sold will usually be houses. The sale procedures described in this section however may be applied to any type of building capable of being moved or to any type of property on the right of way.

### 501.2 AUTHORITY

The authority for the Commissioner of Transportation to sell surplus property is found in Minn. Stat. §161.41:

#### **161.41 SURPLUS PROPERTY NOT NEEDED FOR HIGHWAY PURPOSES.**

*Subdivision 1. Commissioner may declare surplus. The commissioner is authorized to declare as surplus any property acquired by the state for highway purposes, excluding real estate, which the commissioner determines to be no longer needed or necessary for state highway purposes.*

*Subdivision 2. Determination of value; disposition. The commissioner shall administer all aspects of the disposition of property declared to be surplus under this section. The commissioner shall first determine the value of the surplus property. The commissioner may then transfer the possession of the surplus property to any state agency or political subdivision of this state or to the United States government upon receipt of payment in an amount equal to the value of the surplus property.*

*The commissioner may also sell the surplus property under the competitive bidding provisions of chapter 16C if no state agency or political subdivision of this state offers to purchase the surplus property for its determined value.*

Because the buildings which will be discussed in this section of the manual must be moved off the land, they are treated as "personal property". They are not real estate.

Any such building which must be cleared off the land to make way for a future highway project is deemed to be "surplus property" and within the authority of the Commissioner of Transportation to dispose of.

The salvage value of the surplus property will be determined by Property Management personnel. See "Salvage Appraisals," in Section 5-491.508 of this manual.

It is apparent that the above law gives priority to direct transfers of surplus property to "any state agency or political subdivision of this state or to the United States government." This direct transfer procedure is discussed in Section 5-491.505 of this manual.

This section of the manual covers the sale of buildings by competitive bids (as distinguished from direct transfer to state agencies, etc., for the determined value), and also briefly reviews "owner-retained" buildings.

The competitive bidding provisions of Chapter 16C, referred to by the above statute, govern the sale of surplus property. More specifically, the statutes are:

**16C.23 Subdivision 2. Surplus property.** *"Surplus property" means state or federal commodities, equipment, materials, supplies, books, printed matter, buildings, and other personal or real property that is obsolete, unused, not needed for a public purpose, or ineffective for current use.*

**Subdivision 3. Authorization.** *(a) The commissioner is the state agency designated to transfer, purchase, accept, sell, or dispose of surplus property for the state and for the benefit of any other governmental unit or nonprofit organization for any purpose authorized by state and federal law and in accordance with state and federal rules and regulations. Any governmental unit or nonprofit organization may designate the commissioner to purchase or accept surplus property for it upon mutually agreeable terms and conditions. The commissioner may acquire, accept, warehouse, and distribute surplus property and charge a fee to cover any expenses incurred in connection with any of these acts.*

**Subdivision 5.** *(c) The commissioner may transfer or sell state surplus property to any person at public auction, at prepriced sale, or by sealed bid process in accordance with applicable state laws.*

**Subdivision 6. State surplus property.** *The commissioner may do any of the following to dispose of state surplus property:*

- (1) transfer it to or between state agencies;*
- (2) transfer it to a governmental unit or nonprofit organization in Minnesota; or*
- (3) sell it and charge a fee to cover expenses incurred by the commissioner in the disposal of the surplus property.*

Note: The proceeds of the sale less the fee are appropriated to that agency to purchase similar state property.

### **501.3 INVENTORY OF BUILDINGS ON RIGHT OF WAY**

The Property Management Unit receives preliminary information on buildings when making salvage appraisals (preparatory to direct purchase offers being made to the land owners). Subsequently, when the land is being acquired, final information on which specific buildings are being acquired comes to the Property Management Unit by copies of the negotiator's report (in direct purchase) or the proceedings report and the report of commissioners (in eminent domain).

The Property Management Unit will maintain all necessary property information and an inventory records as appropriate.

Records may list other items of property which do not have salvage value but which Property Management may put into a demolition contract. These items are not considered in this section.

For each parcel with a building, Property Management records the most recent scheduled letting date for the highway project. In regard to building sales, the project letting date will govern the length of time allowed to the purchaser to get the building off the right of way.

**501.4 RESPONSIBILITIES OF DISTRICT RIGHT OF WAY OFFICE**

A member of the District Right of Way staff will arrange with the owner a mutual inspection of the building at the time possession is transferred to Mn/DOT. The Mn/DOT representative will verify that fixtures purchased by the state are still in place and that the building is in substantially the same condition as when purchased or acquired by the state. It is suggested that the Mn/DOT representative use the Equipment Exhibit (which was prepared from the Equipment Correlation Schedule in the Appraisal) to verify that all equipment and fixtures which were purchased by the state are in fact being turned over to the state. In addition, all final meter readings are done at this time, with the former owner having responsibility of payment up to the transfer. This includes waste management obligations.

A check-out form has been developed and is reprinted here as a suggested sample.

TO: \_\_\_\_\_ Date \_\_\_\_\_  
 District Right of Way Engineer/Manager

FROM: \_\_\_\_\_  
 (District Right of Way Staff Member)

RE: S.P. \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ County \_\_\_\_\_

**NOTICE OF VACANCY**

The building(s) (describe) \_\_\_\_\_ located at the above referenced address, have been vacated/will be vacant on \_\_\_\_\_. Keys to this property have been/will be picked up by \_\_\_\_\_ on \_\_\_\_\_.

Please make the necessary plans for sale or demolition.

As of the date of possession, the building and improvements are (describe condition and contents, Exhibit A, etc.)

\_\_\_\_\_

**NOTE: ANY EQUIPMENT OF SIGNIFICANT VALUE TO BE ADVERTISED FOR SALE OR ANY CHANGES IN THE CONDITION OF THE PROPERTY BETWEEN PURCHASE BY THE STATE AND TRANSFER OF POSSESSION SHOULD BE NOTED ON THE APPROPRIATE EXHIBIT AND ATTACHED HERETO.**

Final utility readings have been made and documented.  
(Describe arrangement for the disconnection of utilities.)

Forwarded to Property Management  
Supervisor on \_\_\_\_\_

The District Right of Way Engineer/Manager will indicate approval and any comments on the form and forward a copy to the Property Management Supervisor in the Central Office.

The following list contains District Right of Way responsibilities in regard to buildings.

Before the building is sold:

- ! Secure the building against unauthorized entry.
- ! Drain the pipes and water heater. Put antifreeze or salt solution in fixtures.
- ! Have water, gas, and electric services disconnected and meters removed. Bills for utilities properly payable by the state, covering the period after the former owner moved out, should be forwarded to Central Office Property Management for payment.
- ! Notify Central Office Property Management that the building is vacant. In Metropolitan District, forward keys to Central Office Property Management.
- ! At times certain items may be used or needed by maintenance. (Please refer to "Transfer of Surplus Property to District Maintenance Office", Section 505.2 in this manual.)
- ! Local police or fire departments might wish to have demonstrations or training in vacant buildings - contact Property Management Supervisor for assistance.
- ! Put "For Sale" signs on the building upon being notified of pending offering by Central Office Property Management.
- ! Open up buildings for inspection by prospective bidders.
- ! In smaller communities, a notice may be placed on local bulletin boards, at city hall, or grocery stores.
- ! Keep sidewalks shoveled if required by city code and maintain grounds and general maintenance.

After the building has been sold:

- ! Check building removal progress and site clean-up. Photograph as necessary to provide documentation of non compliance.
- ! Check temporary fencing around open basement. (if appropriate)
- ! Ensure well and septic have been addressed.

### **501.5 PUBLIC NOTICE OF SALE**

The procedure described below is used to sell surplus property. All three of the following methods of giving notice must be used for each bid opening.

1. A public notice is inserted at least once in a newspaper publication not less than seven days before the date of the bid opening. (Do not count the day of the bid opening when computing the minimum seven day period.) This is a minimum period. Convenience will most likely dictate an earlier publication date.

2. Bid forms are to be mailed to prospective bidders -- all those who have requested a bid form for the specific property being advertised. (After bid forms have been mailed out, the Property Management employee should sign and date a list of persons being sent bid forms for records.)
3. A notice of the bid opening is posted on the public bulletin board reserved for such notices. This public bulletin board is located in the Office of Land Management, in a location accessible to the public. The posting time must be at least five days before the date of the bid opening. Convenience usually dictates an earlier date, such as posting at the same time the notice is mailed to the newspaper publication.

The public notice in the newspaper publication and the notice posted on the Land Management Office bulletin board must contain enough information about the property being advertised for sale to allow the reader to determine the basic facts about the sale.

Both the newspaper advertisement and the posted notice must contain the following minimum information:

- ! A brief description of each bid item.
- ! A reference to the required bid form and bidding instructions and how the reader can get a copy.
- ! A statement of the time, date, and place of the bid opening.
- ! The date on which the property must be removed from the right of way.

Although the location of the newspaper publication is not prescribed by statute, it has been the custom of the office of Land Management to publish the ad (the "notice") somewhere in the general vicinity where the building or other property is located. In order to get the best exposure for selling, the ad or notice is usually placed in the "houses for Sale" column. It is not necessary that the notice be placed in the "Legal Notices" column.

The Minnesota Newspaper Association publishes a directory of Minnesota newspapers called the Newspaper Directory. The Property Management Specialist will select an appropriate publication from the Newspaper Directory and place the ad. The Newspaper Directory (a copy is available in C.O. Right of Way) lists the various newspapers in each county and also lists them alphabetically by city. It gives the circulation of each publication, day(s) of publication, and the last day for receiving an ad prior to publication.

#### **Sale by Competitive Bids without Advertisement:**

The Property Management Supervisor may determine that under certain circumstances the best interest of the State will be served by making the sale upon competitive bids *without* placing the advertisement described above in 501.5 Paragraph 1, e.g., where vandalism or theft is likely, or where an impending construction letting severely reduces the time which can be allowed for sale and removal of the property; also where a low salvage value might not warrant the cost and delay of publication. Sale by competitive bids without publication of notice is sometimes allowed.

*All purchases or sales the amount of which is estimated to be \$15,000 or less may be made either upon competitive bids or in the open market. So far as practicable, however, they should be based on at least three competitive bids which must be permanently recorded.*

When selling property under this provision, the Property Management Supervisor shall:

- ! Briefly note in the sale file the reason for not advertising.
- ! Include documentation on salvage value (\$15,000 or less).

- ! So as to satisfy that part which requires that, so far as practicable, sales must be based on at least three competitive bids, document the sale file as to efforts made to notify prospective bidders or otherwise make the public aware of the sale. (This will not be necessary when the file contains an extensive list of persons sent a bid form.)
- ! Place a "For Sale" sign on the property (discretionary, as circumstances warrant).
- ! Post a notice of the sale on the public bulletin board (five day period, if circumstances allow).

## 501.6 THE BID FORM

The complete proposal for a building sale offering is made up of the following parts:

- 1) Surplus Property Sale Invitation to Bid and Bid Form.
- 2) Description Sheet for the Sale and Removal of Buildings on Trunk Highway Right of Way.
- 3) Non-Collusion Affidavit.
- 4) Bidding Instructions and Specifications for the Sale and Removal of Buildings on Trunk Highway Right of Way.

NOTE: A shortened version of this form, which may be used for the sale of equipment and miscellaneous outbuildings, sheds, etc., is available from the Property Management Supervisor.

Each of these four parts will be discussed in more detail below:

### 1) Surplus Property Sale Invitation to Bid and Bid Form

This is a one-page form which accomplishes the following:

- ! It announces the bid opening and states where and when the bid opening will be held.
- ! It ties in both the Description Sheet and the Bidding Instructions and Specifications form referred to above; it does this by specific reference and incorporation.
- ! It announces the Removal Date.
- ! It reserves the right to accept or reject bids or parts of bids and to waive informalities therein.
- ! It sets out the statement of the bidder to sign, agreeing to the sale if awarded.
- ! It provides a checklist reminder to the bidder of what items to include in the bid submittal envelope, so that the bid upon being opened will not be found to be incomplete.
- ! It reminds the bidder to sign the form. (Without the signature, there is no bid made. The signature cannot be added after the bid opening.)

### 2) The Description Sheet

This part of the total bid form is typed out for each individual bid opening. A sample Description Sheet is provided on the next page:

DESCRIPTION SHEET  
FOR THE SALE AND REMOVAL OF BUILDINGS  
ON TRUNK HIGHWAY RIGHT OF WAY

S.P. PARCEL	DESCRIPTION	Federal #	Area & Job #
00 H-00000	One Story three bedroom wood frame house... address...		
\$_____ Performance Bond will be required.			
Removal Date:			BID AMOUNT
Liquidated Damages:			
Delay in Removing Building: \$_____ per day			\$_____
Delay in Removing Debris: \$_____ per day			

(List additional bid items, if any.)

The above structure(s) will be open for inspection on \_\_\_\_\_ from 11:00 a.m. until 2:00 p.m. (If the property is located outside the Metro Area, provide the name and telephone number of the District Office contact.)

3) Non-collusion Affidavit

This affidavit must be included with each bid. The bidder declares under oath that there has been no agreement or collusion in restraint of free competitive bidding. As provided on the form, it must be signed before a notary public.

4) Bidding Instructions and Specifications for the Sale and Removal of the Buildings on Trunk Highway Right of Way

(For brevity, this somewhat long title will hereafter be referred to simply as "the specification.")

Because the specification describes the sale process and gives an overall picture of what is expected from each bidder, a large portion of the specification has been repeated below.

(PARTIAL)  
BIDDING INSTRUCTIONS AND SPECIFICATIONS  
FOR THE SALE AND REMOVAL OF BUILDINGS  
ON TRUNK HIGHWAY RIGHT OF WAY

BIDDING INSTRUCTIONS

All bids must contain a minimum bid security of 10 percent of the amount of the bid.

The bid security must be in the form of a certified check, cashier's check, or money order. Cash and personal checks will not be accepted and will cause rejection of a bid. Remittances must be made payable to "Commissioner of Transportation."

Because these buildings are vacant, the state cannot guarantee that any building will remain in the condition which the bidder finds it in during inspection preparatory to submitting a bid. ALL BUILDINGS WILL BE SOLD "AS IS." Once awarded the successful bidder becomes fully responsible for the building.

The state makes no representation or warranty, express or implied, that any building being offered for sale will conform to the building code or permit requirements of any local jurisdiction having control over the relocation of these buildings.

The bidder assumes all risk that a building can be moved over any contemplated route, that necessary permits for relocating the building can be obtained, and that the building can be moved off the right of way within the time period allowed in this proposal.

#### SAMPLE SPECIFICATIONS

##### AWARD OF THE SALE CONTRACT

The state will award a sale contract to the highest responsible bidder for each separate bid item listed on the attached Description Sheet; the state, however, reserves the right to reject any or all proposals, to waive defects and technicalities therein, or to advertise for new proposals in order to award the contract in the best interest of the State of Minnesota. (The highest responsible bidder will hereinafter be referred to as the successful bidder.)

Within 10 days after the bid opening, the state will notify the successful bidder by certified mail that its bid has been accepted. Bids may not be withdrawn during the 10 day period.

In addition to paying the full sale price, the successful bidder must submit a performance bond in the amount specified.

The performance bond may be in the form of a certified check, cashier's check, or money order made payable to "Commissioner of Transportation." A corporate surety Performance Bond or Contract Bond will also be accepted. (A license or permit form of bond will not be accepted.) The bond will be held on deposit by the state to assure performance of the contract, and will be returned following completion of the contract, less deductions, if any, as described (in the specifications).

Failure on the part of the successful bidder to pay the full sale price and to submit the required performance bond within 20 calendar days after the opening of bids shall be considered proof that the successful bidder has elected to abandon the purchase and forfeit the bid security, not as a penalty, but in liquidation of damages sustained by the State of Minnesota as a result of such failure.

Upon receipt of the full sale price and the performance bond, the state relinquishes ownership of the building to the successful bidder (subject, however, to the right of the state to dispose of the building upon default of the successful bidder as described in these specifications). Thereafter any damage to the building from fire, theft, vandalism, or other cause shall be at the risk of the successful bidder. If the building is damaged or destroyed prior to transfer of ownership, the sole remedy of the successful bidder shall be a return of the full sale price and the performance bond.

A bill of sale will be mailed to (or may be picked up by) the successful bidder. It is understood by the successful bidder that title to the building shall not create any right or title to the land upon which the building is now located.

All items listed for sale are subject to the Minnesota Sales Tax. The award letter to the successful bidder will specify the amount of sales tax due, based upon the bid price.

**BUILDING REMOVAL AND SITE CLEANUP**

The successful bidder shall furnish and pay for all labor, material, and equipment required for the removal of the building. All work shall be done in accordance with these specifications and in accordance with local ordinances and regulations. In the event there is a conflict between these specifications and local ordinances and regulations, the local ordinances and regulations shall govern.

The successful bidder shall, at the bidder's own expense, obtain all required licenses and permits for moving the building.

The successful bidder shall have the municipal water service and sanitary sewer service connections into the building cut off and permanently sealed in accordance with the regulations and ordinances of the governmental jurisdiction in which the building is located. Most municipalities will require that the water service and sanitary sewer service connections must be cut off and plugged at the street main before a moving permit will be issued.

The successful bidder shall be responsible for filling and sealing any well shaft serving (or formerly serving) the building. The well shaft must be filled and sealed for permanent abandonment in accordance with the rules set forth in the current Water Well Construction Code of the Minnesota Department of Health. (This work must be done by a licensed water well contractor. A list of such contractors is available from the Minnesota Department of Health.) The cost of this work shall be paid by the successful bidder. The successful bidder shall notify the local building inspector when this work has been completed. Copies of the well contractor's abandoned well report to the Department of Health shall be furnished to the building inspector and to the Department of Transportation representative for this sale.

The successful bidder shall at all times keep the premises free from the accumulation of waste materials and debris caused by his operations.

The furnace, laundry tubs, appliances, ducts, pipes, wiring, wood, wallboard, columns, and debris shall be removed from the basement. (The successful bidder may at times be responsible to fill the basement.) Each sale is looked at individually for specifications.

The successful bidder may be required to remove foundation walls or to remove the basement concrete slab or any on-grade concrete slabs.\*

\*See §501.13, Par. C, for alternate specification  
requiring complete foundation removal.

The successful bidder shall furnish and erect a woven wire, wood slat snow fence (or an approved substitute), approximately four feet in height completely enclosing the open basement.

**DELAY IN REMOVING BUILDINGS**

The successful bidder shall remove the building from the right of way on or before the Removal Date specified in this proposal.

Liquidated damages will be assessed on a calendar day basis for each day that the building remains on the right of way after the Removal Date, and the cumulative daily charges will be deducted from the performance bond.

No liquidated damages will accrue during the period that a building remains on the right of way past the Removal Date when the delay in moving is caused by seasonal roadway load limit restrictions imposed by any governmental jurisdiction. Liquidated damages will not be waived for any other reason.

If the building has not been removed from the right of way by the Removal Date, the state may declare the bidder in default and give written notice demanding that the default be corrected by a time to be specified in such notice. If the successful bidder does not remove the building within the time specified, the state (without further notice to the defaulting bidder) may consider the building and all related property, material, and equipment remaining on the right of way to have been abandoned by the bidder for the state to dispose of by whatever means it may determine appropriate. The successful bidder shall be liable to the state for any costs incurred by the state as a result of the bidder's default together with any assessed daily charges. If the performance bond amount is not adequate to cover such costs plus assessed daily liquidated damages, the successful bidder shall remain liable to the state for the excess. The full sale price will under all circumstances be retained by the state.

#### DELAY IN REMOVING DEBRIS

If the successful bidder fails to keep the premises free from the accumulation of waste materials and debris caused by its operations, or fails to clean up the premises after the building has been removed, the state may give written notice to the successful bidder, describing the (cleanup) work which must be completed and setting a date for completion. If the work is not completed in the time allowed, the state may complete the work or have it done by others. The state will charge the successful bidder for all costs incurred.

\* \* \*

(A separate specification which can be used for the sale of equipment will be discussed later in §501.10.)

#### 501.7 SALE PROCEDURE

The rules and procedures outlined have dual objectives to stimulate competition and prevent favoritism or fraud when contracts are awarded. It follows that the application of the sale procedure must be uniform and consistent as to all bidders. When a bidder participates in a public bid opening for the sale of a building or other Mn/DOT property, that bidder is entitled to feel assured that all of the other bidders for the same property will be bound by the same rules.

The sale procedure is administered by the assigned Property Management personnel acting under the general supervision of the Property Management Supervisor.

Property Management will be responsible for distributing copies of forms or correspondence to the appropriate persons.

#### PROPERTY MANAGEMENT SALE PROCEDURE:

- 1) Receive notice that a building can be put up for sale. Although the notice will usually come in from the District Right of Way Office, it might come from C.O. Property Management Leasing group after a tenant moves out. Coordination will be essential in this sale procedure. The notice from the District Office may specify a Removal Date.
- 2) Set the date that the building must be off the right of way. Generally this will be at least six weeks before the highway project letting date. The bid form and specifications will refer to this date that the building must be off the right of way as "the Removal Date."
- 3) Set the date for opening bids. This date and the Removal Date will in turn establish the amount of time the purchaser will have to work on removing the building. Generally four months has been allowed for this period between the bid opening and the Removal Date. It has, however, been shortened considerably to meet the circumstances. If there appears to be a conflict with the letting date, which will allow little time for removing the building, discuss with the Supervisor. It may be necessary to put the building

removal work into the highway project letting instead of attempting to sell the building. Or it may be possible to modify the highway project special provisions to restrict the contractor temporarily from working in the area where the building is located. This may require FHWA approval, and will then involve the Right of Way Certificates Unit. Regardless of approach, the problem must be solved so that there is not a conflict between the building sale contract and the highway project contract.

- 4) Select the date (or dates) that the building will be opened up for inspection of the interior by prospective bidders. If District personnel are involved, confer with District Right of Way Office before setting date (or dates).
- 5) Set the dollar amounts for the performance bond and for the daily charges to be collected for delay in removing building and for failing to remove debris from site.
- 6) Prepare notice of bid opening for publication in newspaper. Select a newspaper in or near the area where the building is located. Forward the notice to Business Management, who will arrange for paying the cost of the notice (advertisement).
- 7) Post a copy of the notice (or a copy of the bid form) on the bulletin board in the Land Management. This bulletin board is reserved for public notices put out by Land Management for upcoming bid openings on building sales, land sales, and lease offerings.
- 8) Notify Property Management personnel or the District Right of Way Engineer/Manager to post one or more of the standard "For Sale" signs on the building. Although this step is not required by law, it has been effective in attracting bidders.
- 9) Assemble bid forms and mail one to each person who has indicated a desire to bid on the building being offered.
- 10) Time stamp the green bid envelopes (the envelopes are part of the official bid package) as they come in to the office, and place each envelope in the packet designated for the appropriate bid opening.
- 11) Shortly before the time of the bid opening, prepare a bid tabulation sheet listing the buildings (or other bid items) which are being offered at that opening. The buildings should be described by parcel number and sale reference number.
- 12) Conduct the bid opening as soon as the time deadline for receiving bids has passed.

Green bid envelopes are opened one at a time. The name of the bidder, the amount bid for each item offered, and the amount submitted for the bid deposit are all recorded for each bid envelope. This is done before the next bid envelope is opened.

The bid opening is conducted by two Mn/DOT employees, two Property Management employees.

Following the bid opening, the appropriate Property Management employee should sign the bid tabulation sheet, thus certifying that the sealed bids were opened and read in public at the time stated on the form.

The bid tabulation sheet may be on a preprinted form or it may be generated for each separate bid opening.

The bid tabulation sheet and all of the original bids are thereafter open to public inspection.

The bid opening process is in the nature of a ministerial task. It consists of opening each sealed bid envelope, announcing the amount of the bid, the amount of the bid deposit, and the name of the bidder. It is done in the public view. It is important that the process be kept orderly. It is not the time for bidders

to discuss seeming defects in the bids of others for example. It is merely a reading of the bids, and the Property Management employee must exercise the necessary authority to control the orderliness of the process. It might even be suggested that the Property Management employee be ready with a prepared reply, such as: "All bids are subject to review by the Property Management Supervisor."

- 13) Request the Property Management employee to write in the estimated salvage value for each item on the bid tabulation sheet. This will be used for reference by the Supervisor in deciding if a bid will be accepted.
- 14) Submit the bid tabulation sheet to the Property Management Supervisor for approval to award the sale.
- 15) Upon approval of high bids, prepare the award letter to each successful bidder. The award letter will be signed by the Property Management Supervisor. Mail the award letter to the successful bidder and include with it a copy of the bidder's signed bid form, the Description Sheet, and the specifications. As provided in the specifications, the award letter must be sent by certified mail, including return receipt service. For follow-up purposes, note the date when full payment and bond are due as specified in the award letter.

Basically the award letter notifies a bidder that its bid has been accepted by Mn/DOT, and then goes on to instruct the bidder on the remaining dollar amount due and the date due, the amount of sales tax due, and the amount of the performance bond. The award letter emphasizes the "Removal Date." The requirements which are set out in the award letter are made to be consistent with the requirements which were set out in the "Instructions to Bidders."

Upon receiving a complete copy of the proposal, the successful bidder will be able to show the award letter and copy of the specifications to a bonding agent to facilitate getting a surety performance bond. It is important that the bidder be able to do this so that the bonding agent will have a clear understanding of the exact nature of the transaction and the guarantee it will be making.

- 16) Return the bid deposit checks of all other bidders (the unsuccessful bidders) along with a brief written explanation such as, "unsuccessful bid." If all bids are rejected, then all bid deposits will be returned, along with a brief explanation such as, "All bids too low, building to be readvertised." When all bids are rejected, those bidders from whom bids were received at the first bid opening should also be sent a bid form for the next bid opening. Bid deposits are generally returned within two working days following the bid opening.
- 17) Fill in the pertinent data on the "Building Removal/Site Cleanup Inspection Sheet" (give a copy to the District Right of Way employee) and use it in reporting results noted during inspection trips to the site of the building. (Inspection of progress towards removal of the building is covered in §501.8.)
- 18) Forward the bid deposit check of the successful bidder to Finance for depositing. Include appropriate reference documentation.
- 19) Make a Summary of Building Offered for Sale. The Summary lists all the buildings that were offered for sale on a certain bid opening date and indicates whether the building was sold or not. The Removal Date is also noted. The purpose of this form is to notify the District Right of Way Engineer/Manager of the results of the bid opening. If no bids were received for a certain building or if all bids were rejected, that fact should be noted along with a brief statement as to when the building will be wrecked or readvertised for sale.
- 20) When the final payment check is received (including sales tax\*), forward the check to finance along with reference to the sale involved. Finance will return an acknowledgment of receipt.

\*In 1967, shortly after the Minnesota Sales and Use Tax Law was passed, the Office of Attorney General advised that these particular Mn/DOT building sales (where removal from the land is involved) were each "a taxable retail sale of tangible personal property and does not constitute an exempt occasional sale. Accordingly sales tax should be separately stated and added to the price". Some purchasers may present a "Resale Exemption Certificate," issued by the Minnesota Department of Revenue (Form ST-5). In such a case the sales tax should not be collected, but Finance should be duly notified with a copy of the certificate at the time the final sales proceeds are sent to Finance. The resale Exemption Certificate will include the purchaser's Sales and Use Tax Account Number. This number can be verified with the Department of Revenue.

If a bidder defaults, that is, does not submit the final payment and the performance bond when due, the Property Management Supervisor will give the bidder notice that the bid deposit check is forfeited as provided in the specifications. A copy of the notice will also be sent to Finance, thus making Finance aware that the sale transaction is closed. (With the approval of the Supervisor, an award to the second high bidder may be pursued at this point.)

Occasionally, a bidder will submit a bid deposit check in an amount greater than the specified 10 percent. This becomes more common when a bidder submits bids on several items using one bid deposit check, but is not the high bidder on them all. If a bidder defaults in such a case, it has been the practice of Mn/DOT to refund that portion of the bid deposit check which exceeds 10 percent of the default bid.

- 21) A performance bond submitted by the purchaser, if in the form of a certified check, cashier's check, or money order, will be forwarded to the Finance Office for holding until notified by the Real Estate Specialist of future disposition of all or part of the amount of the check. This is discussed further in §501.9

If the performance bond is in the form of a surety bond, the Real Estate Specialist may hold it in the sale packet, pending removal of the building.

At this point there is a completed sale. The state has awarded the sale, and the purchaser has paid for the building (including sales tax) and has submitted a performance bond. The purchaser must now fulfill its obligations under the sale contract (get the building off the right of way on time) and the state must then return any performance bond amounts due back to the purchaser.

- 22) Send the purchaser a Bill of Sale. The Bill of Sale will allow the purchaser to show evidence of ownership to third parties such as city building officials, subsequent purchasers, etc. The Bill of Sale identifies the purchaser, describes the building (including address), states the Removal Date, and declares that the purchaser has paid the full sale price and sales tax. The Bill of Sale will be signed by the Property Management Supervisor.

Before submitting the Bill of Sale to the Property Management Supervisor for signature, the Property Management employee will attach the following form.

Sale No. \_\_\_\_\_  
 Parcel \_\_\_\_\_ Sale Amount \_\_\_\_\_ Purchaser \_\_\_\_\_  
 I hereby certify that all money required in connection with the attached Bill(s) of Sale has been received.

\_\_\_\_\_  
 (Property Management Specialist)

The Mn/DOT bill of sale differs from the usual unconditional bill of sale in that it includes the following statement in bold or capital letters:

THE STATE'S SALE CONTRACT COVERING THE SALE AND REMOVAL OF THIS BUILDING CONTAINS A PROVISION WHICH GIVES THE STATE OF MINNESOTA THE RIGHT TO DISPOSE OF THIS BUILDING IF IT REMAINS ON HIGHWAY RIGHT OF WAY BEYOND THE REMOVAL DATE SHOWN ABOVE.

This statement is in keeping with the overriding purpose of Mn/DOT, namely, to get the building off the right of way by a certain date. The statement is intended to warn subsequent purchasers if the building is sold by the state's purchaser before the building is moved off the right of way. (Such resale before removal is not uncommon.)

The Mn/DOT bill of sale is thus a conditional bill of sale, the condition being the removal of the building from the right of way by the Removal Date, and subject otherwise to recourse by Mn/DOT as provided in the sale contract.

It was mentioned above that resale of the building by the state's purchaser -- before the building is moved off the right of way -- is not uncommon. This does not release the purchaser from the obligations set out in the sale contract, and the Property Management Specialist should continue to send the purchaser any notices of delay or default regarding moving the building. Where the employee has been informed in writing that the purchaser has assigned the sale contract, both purchaser and assignee should be sent such notices. In those cases where the purchaser submitted a surety bond, the surety company should also be sent a copy of the notice.

23) Notify City Officials of Pending Building Removal.

Although not a required part of the sale procedure, the Property Management employee may choose to send a notice of the sale to the local building inspector, thus making the inspector aware of the upcoming removal of the vacant building. This notice may be accomplished by a form letter or by a copy of the award letter, which sets out all of the pertinent details.

The employee may also choose to give a notice to the local water department, so that a moving permit will not be held up because of an unpaid water bill. A sample letter might be as follows:

The Department of Transportation has awarded a sale contract to \_\_\_\_\_  
Covering removal of the (house) at the following address: \_\_\_\_\_

Billings for any unpaid water charges against these addresses should be sent to the Property Management Office.

All unpaid water charges against these properties will be paid promptly by the Department of Transportation as the billings are received.

We make these assurances so that moving or demolition permits will not be withheld from the buyer pending payments of the water charges by the Department of Transportation.

**501.8 AFTER THE SALE: CHECKING PROGRESS OF BUILDING REMOVAL**

The bid form contains the following notice:

ALL PROPERTY SOLD MUST BE REMOVED FROM HIGHWAY RIGHT OF WAY ON OR BEFORE  
THE REMOVAL DATE: \_\_\_\_\_

The Description Sheet also sets out the Removal Date and the specifications require:

The successful bidder shall remove the building from the right of way on or before the Removal Date specified in this proposal.

Thus, the purchaser has been clearly notified that Mn/DOT expects the building to be off the right of way by the specified Removal Date. The purchaser's promise to move the building by such date is a material part of the sale contract.

A representative of Mn/DOT will check on progress being made towards removal of the building.

The employee doing the inspections records the removal progress (or more importantly, the absence or lack of progress). This will allow a timely notice letter to the purchaser. These notice letters may be cited by the Property Management Unit at a later time when justifying deductions made against the purchaser's performance bond (cashier's check, etc.), or when submitting a claim to the purchaser's bonding company. Sample notice letters will be discussed further in this section.

Generally, building removal work does not go forward at an even pace after the sale has been awarded. The purchaser may use several weeks, or even months, getting a permit from the governmental jurisdiction into which the building will be moved. Other business transactions related to the move take time also: for example, purchase of a new site for the building, reaching an agreement with a building mover, possibly a new foundation and installing sewer and water, etc. There may be no apparent activity at the present site until within a few weeks of the Removal Date. The physical work of taking a building off its foundation and moving it onto sets of wheels in readiness for pulling down the road can, however, be done in less than a week. Accordingly, inspections should become more frequent as activity at the site increases or as the Removal Date approaches.

The inspector should keep a written record of observations of progress being made towards removal. When the building has been moved off the right of way and the site cleared of debris, the inspector should notify the Property Management so that either the purchaser's performance bond can be returned or liquidated damages can be assessed for delay. If daily damages are to be assessed because the building was moved after the Removal Date, the report from the inspector should be specific as to the date the building was moved. If that date cannot be determined with certainty, the date of the last inspection showing the building still on the right of way may be used for assessing damages.

Occasionally, before a house is moved off the site, a purchaser will leave debris scattered about. Examples from some past sales include the following: all roofing or siding material torn off the house and thrown down about the yard; likewise in some cases similar disposition of interior wall paneling, carpeting, bathtubs, etc. -- thrown out in the yard or into the open basement; trees and shrubs sawed down to make way for removal work lay withered and scattered about the yard. When such debris accumulates at the site, the neighbors complain. To handle this kind of a situation, the specifications allow for assessing a daily charge for unsightly debris at the site. The procedure is essentially the same as for assessing building removal delay damages, which will be described later in this section. Probably more effective is the right of Mn/DOT to clean up the debris with state forces if the purchaser does not do it by a specified date and charge the purchaser for the cost of the work.

If the accumulation of debris at the site becomes a problem, it is recommended that the inspector take photos. These photos may later be helpful in justifying the reasonableness of assessing damages for debris. In contrast to assessing damages for delay in removing a building, where the building is either on the right of way or is not on the right of way, a debris problem is one of degree. Thus the need for photos to substantiate the position taken.

As the Removal Date approaches and the inspector indicates that little or no progress has been made towards removing the building, the Property Management Unit may want to send a warning letter to the purchaser, although there is no obligation under the contract to do so. Such a letter might read as follows:

Our inspector has made several trips to the \_\_\_\_\_ which you bought and agreed to remove by \_\_\_\_\_. The inspector indicates that no visible work has been done toward moving the building.

We feel that because of the little time remaining before \_\_\_\_\_, it may prove helpful to remind you that the sale contract provides for assessing a \$ \_\_\_\_\_ charge for each day that the building remains on the right of way after \_\_\_\_\_.

If you have need for further information, please contact me at (tel. no.) \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Real Estate Representative

When the building has been moved off the right of way on or before the Removal Date, no delay damages are charged of course and the full performance bond (cashier's, certified check or money order) is returned to the purchaser. To do this Mn/DOT Form 2592 is filled in and addressed to the purchaser. It is forwarded to the Cash Accounting Section for attaching bond (cashier's check, etc.) And mailing to purchaser. (The Real Estate Representative may either keep or return performance bonds which are in the form of a surety bond. Occasionally the purchaser or the bonding company will ask that the surety bond be returned).

We are returning your \_\_\_\_\_ for \$ \_\_\_\_\_ submitted with your bid on \_\_\_\_\_, 20\_\_\_\_ covering item or items listed on \_\_\_\_\_

When a deduction is made from the performance bond and the remainder refunded to the purchaser, Form 2592A is used. This will be discussed in §501.9.

The sale file should contain a copy of the Inspection Report Sheet (or a written notation of a telephone report received from the District Right of Way inspector) indicating that the building was moved prior to the Removal Date, if such was the case.

### **501.9 DELAY IN REMOVING BUILDINGS**

This section will describe the procedure available to the Real Estate Representative if a purchaser fails to remove a building from the right of way by the Removal Date.

The sale contract provides that the state will begin assessing a daily charge against the purchaser for each day that the building remains on the right of way after the Removal Date. This charge has generally been in the range of \$250 per calendar day. The amount may vary from one sale to the next, however, depending on such considerations as tight scheduling prior to letting date, a rural versus an urban location, experience dealing with the local city officials, etc. In some cases, the District Right of Way Engineer/Manager may request that there be no charges specified for delay in moving a building. In such case, because the text of the specifications makes several references to the daily charge of liquidated damages for delay, it is recommended that the Description Sheet should show the following:

Liquidated Damages: None

It should be mentioned here, however, that experience has shown that this charge of daily liquidated damages has been the singular most effective means of getting these buildings off the right of way within the time allowed by the sale contract.

When the sale contract does provide for charging liquidated delay damages, then the charge should be assessed automatically and uniformly. It should not be assessed selectively. It should be assessed for each day that the building remains on the right of way past the Removal Date, regardless of whether the building has been raised off the foundation or even has been put up on wheels, ready to be pulled away.

Experience has shown that, when liquidated damages are not charged, some purchasers (and their house movers) will not hesitate to leave a house parked on the right of way long past the Removal Date, regardless of what was agreed in the sale contract. At times this condition has dragged on for several months, until the house mover has found it convenient to move the house to its new foundation. When a house is stored on the right of way, up on timber cribbing or up on wheels, Mn/DOT is presented with the difficult problem of trying to get a demolition company or another purchaser to work on its removal. This has not proven to be an effective remedy; thus the need for the daily liquidated damages clause.

The liquidated damages clause is not a penalty clause. Rather it represents an agreed-to measure of the damages or loss to Mn/DOT arising from the delay. It takes into account possible disruption of a highway project letting, aggravation for nearby neighbors, more inspections by Mn/DOT personnel, problems for local building inspectors, and general public inconvenience to name a few of the adverse affects caused by the delay. The purpose of the liquidated damages clause is to preclude having to show actual damages.

In an attempt to avoid having to pay liquidated damages, a purchaser will sometimes complain that it should not have to pay these delay charges when there are other (sometimes nearby) houses along the new right of way which have not yet been moved, or in some cases, not yet even acquired by Mn/DOT. The Department's program of acquisition of properties and relocation of residents must, of necessity, be conducted over a span of time and the right of Mn/DOT to enforce its sale contract for the removal of these houses should not have to wait until that last house is moved. Until the last house is moved, there will always be some other house for the house mover to point to as an excuse for not paying the daily charge. The short answer of course is that the purchaser is bound by what was agreed in the contract.

Back to procedure, if the building remains on the right of way past the Removal Date, the Real Estate Representative may decide to send a letter to the purchase, similar to the following:

Under the sale contract referred to above, you were obligated to remove the \_\_\_\_\_ on or before the specified Removal Date, \_\_\_\_\_. Our inspector was at the site on \_\_\_\_\_ and recorded that the building had not yet been moved off.

That part of the contract covering liquidated damages is set out on pages 3 and 4 of the "Bidding Instructions and Specifications Pertaining to Removal of Buildings on Trunk Highway Right of Way." Charges of \$\_\_\_\_\_ per calendar day began on \_\_\_\_\_. This office will continue to assess this charge until the building is moved off the state-owned land.

Any questions regarding this notice should be directed to \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

Although a notice to the purchaser, such as the sample set out above, is not required by the terms of the sale contract, it will have the effect of making is unmistakably clear to the purchaser that Mn/DOT does not intend to waive the daily charges. This warning is sometimes needed in order to get the purchaser to induce the house mover to complete the move. For many of these purchasers, buying a Mn/DOT house (and getting it moved) is a one-time experience.

After the building has been removed from the right of way, the inspector will review the site and submit the inspection report. The inspection report will show the number of days that the building remained on the right of way past the Removal Date. The corresponding amount of total liquidated damages can then be computed.

If the performance bond was in the form of a certified check, cashiers check, or money order, then it will be convenient to use Mn/DOT Form TP2592A. This form serves the dual purpose of 1) instructing Finance Administration as to the amount to deduct from the bond and the amount of the state warrant to be drawn, and 2) serves as the cover letter by which Finance Administration sends the state warrant directly to the purchaser.

The operative part of TP2592A is set out below:

We have enclosed a refund warrant in the amount of \$\_\_\_\_\_. This amount represents that part of your performance bond which remains after deducting liquidated damages for \_\_\_\_\_ days at \$\_\_\_\_\_. (Do not include the day of the "Removal Date" in computing liquidated damages.)

Reason: Delay in removing building (or delay in cleaning debris at site).

The Property Management employee prepares the form (form letter) to the purchaser and forwards it to Finance Administration.

It is apparent that collection of delay damages presents no particular problem when the performance bond is in the form of a certified check, cashiers check, or money order. The dates of delay are documented by the inspector and the purchaser is given a clear statement in writing of the dates and the charges, along with a state warrant for the refund amount. But the procedure is not as simple, however, when the performance bond is a surety bond. It will be recalled that the specifications gave the purchaser the option of submitting a surety bond. The specifications provided:

The performance bond may be in the form of a certified check, cashier's check, or money order made payable to "Commissioner of Transportation." A corporate surety Performance Bond or Contract Bond will also be accepted. (A license or permit form of bond will not be accepted.)

Before discussing the procedure for presenting a claim to a surety company, a few general comments regarding surety bonds should be made.

There is a common misconception that if the bonded party (the purchaser) defaults, all the state will have to do is notify the surety and either completion of the contract or payment will be forthcoming. In fact, the surety bond only assures the state the dollar amount of the bond will be made available to pay the cost of removal (plus liquidated damages) after the bonding company has been convinced that the purchaser has defaulted. The surety performance bond is financial in nature and is not an agreement to specifically perform a contract in the event of default. If a claim is presented to a surety, it must be accompanied by persuasive evidence of Mn/DOT's costs to correct the default, for example, the amount paid by Mn/DOT to tear down the building.

Occasionally a purchaser will submit a "license bond" or a "permit bond," as these types of bonds are regularly required by various government bodies, and the bond agent mistakenly issues one, presumably because the state is involved. The conditions of these bonds do not meet the requirements of the sale contract and should not be accepted. Such bonds usually guarantee only compliance with local ordinances and codes and are cancellable on short notice. In contrast, a "performance bond" or "contract bond" is not cancellable once it has been issued.

It does not matter whether the bond is titled a "Performance Bond" or a "Contract Bond." Either is acceptable as long as the bond covers ALL obligations under the sale contract (i.e., includes liquidated damages) and does not restrict coverage to merely removal of the building. As pointed out previously, the liquidated damages clause gets the building off the right of way. The bond must contain some reference which ties it to the sale transaction

(the sale number or house address, date of bid opening, date of award letter, etc.). Also the time allowed by the bond for Mn/DOT to present a claim must not be too short. Anything under a year is probably too short.

The surety must be authorized to do business in Minnesota. If this is a concern, it can be checked by phoning the Minnesota Department of Commerce, Insurance Division, which has jurisdiction over surety bonds issued in Minnesota. Most providers of surety bonds are large insurance companies.

Personal sureties (such as letters of credit or pledges of certificates of deposit, etc.) are not accepted. If a claim does arise, the corporate surety will have claims handling expertise, while personal sureties do not.

Before contacting the surety, the Property Management employee will try to contact the purchaser (not the purchaser's house mover) to declare that the state is preparing to notify the surety of a claim. Experience has shown that many purchasers will at this point want to pay the charges rather than involve their surety. This is especially true if they will need bonds in the future. The purchaser may then send a check (certified check, etc.) to the Property Management representative to cover the full amount due. The representative will forward the check to Finance Administration with an explanation of what the check is for. The file may then be closed.

If the contact with the purchaser produces no result within a reasonable time, then the Representative should prepare a letter (for the Property Manager's signature) to the surety stating the amount of the claim and the reason. A copy of the sale contract (including the building removal specifications) and a copy of the field inspector's report and any notice letters should be included. A copy of the bond (or pertinent data from the bond) should also be enclosed with the letter. Such letter may be sent to the bonding company, if the address is known (it doesn't always appear on the bond), or to the agent which issued the bond, if known.

The bonding company will then contact the purchaser. If the claim appears valid to the bonding company, this usually resolves the problem, and payment from the purchaser is received. The purchaser does not usually get a bond without first agreeing to indemnify the bonding company for any amount the bonding company must expend on the claim. This indemnity agreement provides the purchaser with the incentive to complete the work or to make the payment to the state.

If the informal notice procedure set out above produces no results, then a formal claim should be submitted to the bonding company. This is done through the Minnesota Department of Commerce (Insurance Division) for a small service of process fee. A representative at the Department of Commerce will explain the procedure. The same thorough documentation to justify the claim will be required however. If such notice to the bonding company does not produce a satisfactory response and settlement, the matter should be referred to the Office of the Attorney General.

The above discussion mentioned collecting liquidated damages from the purchaser or from the bonding company based on delay in moving the building. The same procedures apply however to collecting any expense incurred by the state in correcting any default by the purchaser. This is provided for in the specification.

If the building continues to sit on the right of way, the sale contract allows Mn/DOT to "take over" the building and get it removed by other means—means which do not involve the purchaser. In order to avail itself of this remedy, Mn/DOT must first notify the purchaser in writing of the default and, in addition, must give the purchaser an additional period of time, as specified in the notice, to remedy the default by getting the building off. The period of time must be reasonable under the circumstances.

The operative part of the specification provides:

If the building has not been removed from the right of way by the Removal Date, the state may declare the bidder in default and give written notice demanding that the default be corrected by a time to be specified in such notice. If the successful bidder does not remove the building within the time specified, the state (without further notice to the defaulting bidder) may consider the building and all related property, material, and equipment remaining on the right of way to have been abandoned by the bidder for the state to dispose of by whatever means it may determine appropriate.

The following sample letter is intended to comply with the above requirements of the sale contract and to put Mn/DOT in a position to go forward with getting the building off the right of way by other means (which will not involve the defaulting purchaser).

The sale contract for the above referenced structure required that it be removed and the site cleaned of debris by \_\_\_\_\_. Inspection by this office on \_\_\_\_\_ recorded that the work has not been completed in the following regard:

Therefore, pursuant to the terms of the sale contract, the Department of Transportation declares you in default and notifies you that this work must be completed on or before \_\_\_\_\_.

I refer to the default provision on page 4 of the "Bidding Instructions and Specifications Pertaining to Removal of Buildings on Trunk Highway Right of Way." This provision was included as part of the sale contract.

If the structure is not removed on or before \_\_\_\_\_, the Department of Transportation will remove it, with all costs assessed against you as provided in the sale contract. We will continue to assess delay damages of \$ \_\_\_\_\_ per day until the work is completed, or until \_\_\_\_\_ whichever comes first.

Any questions regarding this notice should be directed to \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Property Management Supervisor

cc: Surety Company (if any)\*

\*If a surety performance bond has been submitted, the surety should be notified of any adverse development with respect to a bonded purchaser.

At the expiration of the additional time period which was allowed by the above letter, if the building is still not off the right of way, then Mn/DOT can go forward with making other arrangements for getting it off, without subsequent obligation to the defaulted purchaser. Care should be taken not to modify this result by oral statements made to either the purchaser or the purchaser's building mover.

## 501.10 SALE OF EQUIPMENT

For selling equipment, there are two specifications available. The first is RW4848A.BP. This specification covers an equipment sale which requires a performance bond and also specifies daily damages for delay in removal of the equipment. If a performance bond is wanted, but it is preferred to not charge daily damages for delay, then the liquidated damages can be shown as "none" on the Description Sheet, as was previously described in §501.9 for building sales without daily charges.

A second, abbreviated, equipment sale specification is RW5884A.BP. Although this specification also has a provision for requiring a performance bond, it has no provision for charging a daily amount if all of the equipment is not removed. RW5884A.BP contains this paragraph:

The successful bidder shall remove the equipment from the right of way on or before the Removal Date specified in this proposal. Any equipment remaining after the specified Removal Date will be considered to have been abandoned by the successful bidder for the state to dispose of as it deems appropriate (without further notice to the successful bidder). In such case the successful bidder will not be liable to the state for costs incurred by the state in removing any equipment left and abandoned by the successful bidder. The full sale price will, however, be retained by the state.

This alternate equipment sale specification reflects the common situation in which a successful bidder will be interested in removing only certain select pieces of equipment, and would prefer to leave the rest in place (also with piping, pump, etc.).

If various items of equipment within the same building or in the same immediate vicinity are sold as separate bid items, care must be taken to clearly define the limits of the electrical controls and piping which go with each bid item. Otherwise a conflict between different purchasers is likely, and the state will be drawn into it by one or the other of the purchasers for not putting out a clear sale contract. Depending on the nature of the equipment being sold, experience has shown that it is generally best to have only one bid item covering all of the equipment and thus only one purchaser working at the site. However, when an item of equipment has significant value apart from the other equipment, designating separate bid items may be best (with care taken to define the physical or cut-off limits of each sale item).

When either of these equipment removal specifications is used, the “Surplus Property Sale Invitation to Bid and Bid Form” (RW32550A.BP) should be modified in the fourth paragraph by striking over or blocking out the reference to “building” and substituting “equipment.” The paragraph as modified would appear thus:

The specifications governing this sale, entitled **BIDDING INSTRUCTIONS AND SPECIFICATIONS FOR THE SALE AND REMOVAL OF EQUIPMENT ON TRUNK HIGHWAY RIGHT OF WAY**, are attached hereto and incorporated as a part of this invitation to bid.

### **501.11 OWNER-RETAINED BUILDINGS**

It is not uncommon for a land owner, before accepting the state’s purchase offer, to elect to keep one or more buildings that are located on the land rather than transferring ownership to the state along with the land. The owner must then remove the buildings from the subject land within the 120 day period which the owner would otherwise have had for occupying the building.

The Mn/DOT booklet “Guide for Property Owners” contains the following paragraph of advice to owners:

By agreement, you may retain and remove any or all improvements located on your property, but removal of such improvements must be made at your own expense. Salvage value of the improvements retained will be deducted from the amount of the offer.

A two page form has been developed to accommodate this transaction and is titled "Agreement by Owners to Remove Building" (RW0029193A.BP).

When the owner elects to retain a building, the “Agreement by Owners to Remove Building” should be specifically referred to in the purchase agreement (Offer to Sell and Memorandum of Conditions–Mn/DOT Form 25305), and made a part of the purchase agreement by reference, with a copy of the Agreement attached thereto.

The "Agreement by Owners to Remove Building" contains essentially the same provisions (performance bond, liquidated daily damages, specified Removal Date, etc.) as contained in the previously discussed specification covering removal of buildings sold by bids. The provisions of the owner-retained building removal specification will therefore not be repeated here. The main purpose, however, of each specification is the same: to give Mn/DOT some control over getting the building off the new right of way within the allotted time.

Back in §501.8, sample letters were shown for giving either a warning to the building purchaser or for declaring a default. These samples can also be used, with some modification, for preparing letters to a former owner regarding delay in removing an owner-retained building.

A variation of the above form is available to cover the case where Mn/DOT requires the former owner to remove the foundation and fill in the basement hold. That two page attachment form is titled "Agreement by Owners to Remove Building (Including Foundation Removal)" and is from RW5664A.BP.

### **501.12 AUCTION IN LIEU OF BIDS**

Minn. Stat §16C authorizes sales by auction:

When the auction process is used, District Right of Way staff can contact the Department of Administration directly for the name of an auctioneer to be assigned to this sale. Contact the Department of Administration, Materials Management Division and talk to the appropriate purchasing agent within the Division who oversees auctioneer services. Materials Management has licensed auctioneers under contract around the state and one will be assigned to this sale. The auctioneer's fee will be determined by the Department of Administration.

Once assigned, the auctioneer will contact the designated person in the District Right of Way Office and the items to be sold and the sale date will be agreed upon. The auctioneer will take it from there. The auctioneer will advertise the sale pursuant to the above law, will provide other advertising and promotion, will conduct a public auction of the items of property, and will collect payment from the various high bidders on the items sold.

The auctioneer will pay advertising costs and any other costs out of the auctioneer's fee, which is set by agreement between the auctioneer and the Department of Administration.

The purchasing agent at the Department of Administration will direct the auctioneer to pay the proceeds of the sale (less auctioneer's fee) to the Mn/DOT Finance Administration Office.

Department of Administration Materials Management staff will monitor the auction process and verify the final accounting. Department of Administration will charge Mn/DOT for this service.

The auction process has been used by Mn/DOT with good results and seems suitable for consideration when there are numerous items to be sold at one location. The auction is coordinated by Property Management with help and assistance from the district.

Although the auction process lends itself best to the cash-and-carry type transaction, it can be used for the sale of buildings also. When the sale of a building is by auction rather than sealed bids, portions of the standard form "Bidding Instructions and Specifications for the Sale and Removal of Buildings on Truck Highway Right of Way" should be included as part of the sale process by the auctioneer. More specifically the sections titled "Building Removal and site Cleanup" and "Delay in Removing Buildings" should be included.

**501.13 MISCELLANEOUS CONSIDERATIONS**

The following paragraphs discuss some miscellaneous topics which have some bearing on building sales and which may be of interest in that regard.

**A. BUILDING MOVERS (HOUSEMOVERS)**

Building Movers are under the jurisdiction of the Mn/DOT Office of Motor Carrier Safety and Compliance. See Minn. Stat. §221.81. Therefore if a purchaser or a city building inspector, etc. has a complaint about the operations of a housemover, that person should be referred to the Office of Motor Carrier Safety and Compliance.

**B. SEASON RESTRICTIONS ON MOVING BUILDINGS**

Every year in early spring housemovers will be prohibited from moving heavy buildings on state and county highways. The period of restriction is generally from March 1 to May 15 but will vary from year to year, depending on the severity of the winter and other factors. The dates will also vary from county to county. The Real Estate Representative will have to take this somewhat indefinite period into account when establishing Removal Dates since the Mn/DOT sale contract allows the purchaser to leave the building at the site when the Season Load Restrictions prohibit moving on the highway. If the building must be off for a scheduled highway contract letting in the spring, the removal period allowed by the sale contract should be shortened so that the building must be removed during the winter, before the spring road restrictions go into effect.

**C. REMOVAL OF FOUNDATIONS**

The District Right of Way Engineer may recommend that the sale contract require the purchaser to remove the complete foundation. To accommodate this, specification Form RW4528A.BP should be used.

Form RW4528A.BP is captioned:

**BIDDING INSTRUCTIONS AND SPECIFICATIONS  
FOR THE SALE AND REMOVAL OF BUILDINGS  
ON TRUNK HIGHWAY RIGHT OF WAY  
(INCLUDING FOUNDATION REMOVAL)**

It contains the following paragraph:

The successful bidder shall remove the building foundation, including foundation walls, footings, and basement slabs; also steps, private sidewalks, on-grade concrete slabs, and concrete or asphalt driveways. The excavation remaining after removal of the building shall be filled to the level of the surrounding grade with clean granular-type fill material, properly sloped and compacted to allow drainage and prevent ponding of water.

(For owner-retained buildings the corresponding form which requires foundation removal is RW5664A.BP.)

**D. RODENT CONTROL**

The most effective time for exterminating rodents from within a building is just prior to the time the building is demolished, or, in the case of a building which is to be moved, just prior to the time it is removed from its foundation. Some cities require by ordinance that, before a house moving permit is issued, the house mover must furnish evidence that a licensed rodent control company has exterminated all rodents in the building.

For example, the City of St. Paul Building and Housing Code, Section 47, House Movers, requires:

Sec. 47.02. Permit Requirements.

Pest control. No permit shall be issued for the removal of any building until satisfactory evidence is furnished to the building code officer that a licensed pest control company has satisfactorily exterminated all nuisance pests from the structure and premises.

The Mn/DOT building sale contract specifications do not specifically require rodent control, requiring instead that the building purchaser must comply with the local moving permit requirements.

The following two paragraphs taken from the specifications apply not only to rodent control work but to other local requirements as well.

The successful bidder shall furnish and pay for all labor, material, and equipment required for the removal of the building. All work shall be done in accordance with these specifications and in accordance with local ordinances and regulations. In the event there is a conflict between these specifications and local ordinances and regulations, the local ordinances and regulations shall govern.

The successful bidder shall, at the bidder's own expense, obtain all required licenses and permits for moving the building.

#### E. SALE OF ITEMS WITHIN BUILDING

Occasionally a person will telephone and ask to buy a specific item (or items) within a building. Experience has shown that, unless the item has significant value, the cost to Mn/DOT to put the item up for bid will be considerably more than the price bid, and the practice of trying to accommodate such persons should be discouraged. These people can be notified as to which demolition company will be taking down the building and they can then deal directly with the demolition company. The removal of such interior items in some cases will affect the security or structural stability of the building and is allowed by some cities to be performed only by licensed demolition contractors. Experience has also shown that the time taken in monitoring the operation of the purchaser within the building is considerably out of proportion to the price bid.

District Maintenance may want some items for Mn/DOT use--compressors, window air conditioners, hoists, light fixtures, etc. This must be coordinated with the Property Management Unit. See section of Right of Way Manual on Transfer of Surplus Property.

#### F. GUARD SERVICES

Occasionally Mn/DOT acquires a building (or buildings) for which, because of the value of the building or the value of the fixtures, or because other circumstances related to the site, a guard at the site would be desirable. This should be coordinated with the Property Management Unit.

#### G. SALE OF MISCELLANEOUS BUILDINGS, LANDSCAPING, OR TREES AT SITE

Many times a piece of land which Mn/DOT has acquired will contain, in addition to the main building, one or more other miscellaneous buildings. The Property Management Specialist may want to discuss these buildings with the Building Removal Technician and the District Right of Way Engineer before deciding to offer any of them for sale. Each different situation must be considered separately. In some cases the buildings may be included with the house sale so that the house buyer ends up removing them. In other cases the Property Management Specialist may decide to offer them either individually or grouped together as one bid item. In some Districts, the preferred method is to have the District Maintenance forces remove them as soon as the former owner moves.

In those cases where a miscellaneous building at the site may interfere with the house mover's work in removing the house, then the miscellaneous building should be included in the same bid item as the house. The house buyer can then get the miscellaneous building out of the way (by removal or demolition) without delaying the house moving operation. The salvage value of these buildings in most cases does not justify the cost of attempting to sell them.

The sale of low-value miscellaneous buildings (garages, sheds, etc.) on the site should not be allowed to interfere with the removal of the main building (house) or to put a burden on the Property Management Specialist in trying to dispose of these buildings. This also applies to trees, shrubs, landscaping, etc. It is generally not a good practice to entertain these in the bid process. Put prospective bidders in touch with the contractor.

#### H. FEDERAL HIGHWAY ADMINISTRATION

If Federal funds participated in the cost of acquisition of the right of way, then Mn/DOT must charge a fair market value. The Federal share of net income from the revenues obtained by a state from the sale, lease, of excess real property shall be used for activities eligible under Title 23 of the U.S. Code.

#### I. SALE TO EMPLOYEE OF STATE

Surplus buildings may be sold to an employee of the state or to an employee of any of its political subdivisions "after reasonable public notice at public auction or by sealed bid if the employee is the highest responsible bidder and is not directly involved in the auction or sealed bid process." Reasonable public notice must be "at least one week's published or posted notice." Because the advertised sale procedure described herein in §501.7 fulfills the requirement of "one week's published notice," the bidder who is a public employee can be treated the same as any other bidder (provided the employee is not one of the few people directly involved in the auction or sealed bid process).

#### J. SEALING WATER WELL

If there is a water well serving the building, the well must be sealed and abandoned in accordance with Minnesota Department of Health rules to protect the groundwater aquifer. Chapter 4725 of Minnesota Rules, titled Department of Health Water Well Construction Code, provides that the owner is responsible for sealing an abandoned well, but may by a written contract transfer the well-sealing operation to a licensee. Mn/DOT transfers this obligation to the purchaser of the building by means of the building sale contract. It should be noted that the purchaser must hire a licensed well contractor to do this work.

The Transportation Specialist should notify bidders of any known wells by noting on the bid form Description Sheet the existence of such wells at the site.

Questions by bidders regarding well sealing code requirements may be referred to the Minnesota Department of Health:

Ground Water Quality Control Unit  
Section of Water Supply and Engineering  
Division of Environmental Health

#### K. MODIFICATIONS OF THE STANDARD SPECIFICATIONS

Any modifications of the standard specification, which may become necessary to set out special circumstances or requirements of a particular sale offering, should clearly indicate the extent to which the standard specification is to be superceded.

**PROPERTY MANAGEMENT (5-491.500)**  
**LEASES (5-491.502)**

**502.1 INTRODUCTION**

The Commissioner of Transportation may lease highway right of way, including the airspace above and subsurface below any trunk highway, acquired in fee, for a fair rental rate and other applicable terms and conditions, provided such right of way is not immediately needed.

**502.2 LEASING AUTHORITY**

The authority for leasing out highway land owned in fee title comes from Minn. Stat. §161.23, Subd.3, Minn. Stat. §161.433 and for Eminent Domain Land in Minn. Stat. §117.135, Subd.3.

*Minnesota Statute 161.23 EXCESS ACQUISITION*

*Subdivision 3. Leasing. The commissioner may lease for the term between the acquisition and sale thereof and for a fair rental rate and upon such terms and conditions as the commissioner deems proper, any excess real estate acquired under the provisions of this section, and any real estate acquired in fee for trunk highway purposes and not presently needed therefor. All rents received from the leases shall be paid into the state treasury. Seventy percent of the rents shall be credited to the trunk highway fund. The remaining 30 percent shall be paid to the county treasurer where the real estate is located, and shall be distributed in the same manner as real estate taxes. This subdivision does not apply to real estate leased for the purpose of providing commercial and public service advertising pursuant to franchise agreements as provided in Sections 160.276 to 160.278.*

*Minnesota Statute 161.433 USE OF HIGHWAY AIRSPACE AND SUBSURFACE*

*Subdivision.1. Lease or permit, conditions and restrictions. The commissioner of transportation may lease or otherwise permit the use of the airspace above and subsurface area below the surface of the right of way of any trunk highway, including the surface of the right of way above and below the airspace or subsurface areas, where the land is owned in fee by the state for trunk highway purposes when the use will not impair or interfere with the use and safety of the highway. The lease, permit, or other agreement may contain such restrictive clauses as the commissioner deems necessary in the interest of safety and convenience of public travel and other highway purposes. No lease, permit, or other agreement shall be for a period in excess of 99 years. Vehicular access to such airspace, subsurface, or surface areas shall not be allowed directly from the highway where such access would violate the provisions of United States Code, Title 23, or would interfere in any way with the free flow of traffic on the highway. Any lease, permit, or other agreement shall have the approval of the appropriate federal agency when required.*

*Subdivision.2. Consideration for use. The consideration paid for the use of airspace or subsurface areas shall be determined by the commissioner, but in no event shall it be less than a fair rental rate, and shall include costs for the erection and maintenance of any facilities or other costs occasioned by that use. All moneys received shall be paid into the trunk highway fund. This subdivision does not apply to real estate leased for the purpose of providing commercial and public service advertising pursuant to franchise agreements as provided in Sections 160.276 to 160.278.*

*Subdivision.3. Application to certain provisions. Laws 1967, Chapter 214 shall not apply to or affect the rights and privileges referred to in Sections 161.45, 222.37, and 300.03.*

***Minnesota Statute 117.135 Eminent Domain Property Rental***

***If the state transportation department permits a person or business to occupy a property for a period of more than 120 days after the date of acquisition, the department shall thereafter charge a reasonable rental therefor in accordance with the provisions of Section 161.23, Subdivision 3.***

**! Easement Land:**

Highway easement land is not covered by the above leasing statutes. Leasing out land over which the state has acquired a highway easement creates special difficulties. The authority for leasing such land is contained in Minn. Stat. §161.43 and will be discussed in Section 502.13.

**! Delegation of Authority:**

The Commissioner of Transportation has delegated to the Director, Office of Land Management, the authority to sign all Mn/DOT leases.

**! Leasing Land from others:**

This section of the Right of Way Manual, titled LEASES (5-491.502), will discuss only the subject of leasing out state-owned land. For the subject of leasing land from others for carrying out Mn/DOT operations, see Sections 509 and 510 of the Right of Way Manual -- Property Management.

**502.3 PROCEDURE FOR INITIATING A LEASE**

Lease requests originate in the District where the property is located. If a prospective tenant makes a request for a lease directly to Property Management personnel, that person should be directed to contact the District Right of Way/Land Management Engineer.

Upon receiving a request to lease, the District Right of Way/Land Management Engineer determines whether a lease request should be sent to the Property Management Supervisor. The determination of whether or not to lease is made in the District with consultation by the Property Management Supervisor, as needed.

If a lease request is approved in the District Office, the District Right of Way/Land Management Engineer provides the following information (needed by Property Management in preparing a lease):

1. The legal description of the area to be leased or a marked-up exhibit (Right of Way Map) showing the limits of the area to be leased.
2. The recommended term or duration of the lease, taking into account tentative construction letting dates. (Term limits are not determined by statute; however, Property Management follows Department of Administration Statute §16B.24 Subd.5. Most Mn/DOT leases are written for terms of two years or less.)
3. The name, address, and telephone number of the prospective tenant (the person/entity requesting the lease). Even if the lease will be advertised for bids, this information should be included so that a bid form can be sent to the interested person. See Section 502.4, TENANT.
4. Recommended rent and an explanation of how rent was derived. This is not needed if the lease will be advertised for bids; however, the acquisition price is helpful to set minimum bids. See Section 502.5, RENT, regarding fair rental rate.
5. A listing of any special restrictions on tenant's use of the property. These restrictions will be included in the standard lease form prepared by Property Management personnel.

6. A determination of whether the state owns the land in fee or holds a highway easement over the land to be leased. Leasing out a highway easement property presents special problems. See Section 502.13.

The proposed lease must be evaluated to see if it meets the below-listed statements. If it does, the District's recommendation to Property Management Supervisor should contain these statements:

- A. The lease will result in no increased hazard to the safety and convenience of the traveling public, and the leasing of the right of way will not adversely affect the highway facility or the traffic thereon.
- B. The lease will not substantially lessen the beauty of the area as seen by the highway motorist.
- C. The lease will not result in increased noise to adjacent noise-sensitive areas.
- D. Traffic on the facility will be maintained and protected in conformance with the Minnesota Manual on Uniform Traffic Control Devices.
- E. The proposed lease will not affect lands given special protection under laws outside Title 23, U.S.C., such as wetlands, flood plains, sites on or eligible for the National Register of Historic Places, critical habitat, etc.; and the proposed lease is consistent with the Finding of No Significant Impact (FONSI) issued by the Federal Highway Administration on May 18, 1984.
- F. The proposed lease was (or will be) discussed with the FHWA Realty Officer. (This applies only for proposals on the National Highway System - see §502.11)

NOTE:

(i) Environmental requirements must be complied with by Mn/DOT. The above statement "E" is made by the District Right of Way/Land Management Engineer to affirm that the proposed lease is covered by the September 1989 Programmatic Environmental Assessment and the May 1984 FONSI. These apply to Reconveyances, Temporary Use Permits, and Access Control Changes. (Leases are included within the FHWA category of "Temporary Use Permits.")

(ii) Proposals which have potential for significant environmental impact fall outside the above assessment and FONSI. On these, an analysis must be made of environmental impacts.

## 502.4 TENANT

This section sets out guides for determining whether a certain person or entity, having expressed an interest in leasing a specific parcel of land from Mn/DOT, can be offered a lease directly, or whether that person or entity will have to bid on the lease after Mn/DOT advertises the parcel for lease by sealed bids.

### A. DIRECT LEASE OFFER TO FORMER OWNER

If Mn/DOT is in the process of acquiring a person's property, or has recently completed acquiring the property, a lease may be entered directly with the owner or former owner, until the property becomes needed for highway purposes.

### B. DIRECT LEASE OFFER TO PERSON OR ENTITY OTHER THAN FORMER OWNER

Competitive bidding need not be used when the Property Management Supervisor, or Designee, determines that one or more of the following circumstances exist:

- (i.) there is only one interested party that can feasibly use the property;
- (ii.) factors other than bid price, such as maintenance of the property, are paramount;
- (iii.) the contemplated rental term is of short duration;
- (iv.) other governmental entities have expressed the desire to lease the property; or
- (v.) factors exist which make the taking of competitive bids impractical or not in the best interest of the State of Minnesota.

Note: The above subparagraphs (i) through (v) are taken from the Minnesota Rules (see MCAR 1245.0900) governing leasing out of land by the Minnesota Department of Administration when competitive bidding is not used, and is titled, "Property Leasing (Where State is Lessor)."

When a lease is offered directly to a person/entity other than a former owner, under one or more of the above subparagraphs, the lease file should contain documentation regarding the circumstances under which the lease was made.

#### **502.5 COMPETITIVE BIDDING (LEASE TO HIGH BIDDER)**

A. An advertisement is placed in a newspaper in the general area where the leased property is located. The ad need appear only once, but at least seven days before the bid opening. The ad must give enough information about the property to allow a person to decide if a bid form should be requested. The telephone number of the Property Management unit should be given so that a person can request a bid form, and the time, date, and location of the bid opening must be stated.

B. A standard leasing bid form is to be included with the Lease package. A copy of the proposed lease should be attached to each bid form so that a bidder will be made aware of the required provisions of the lease before placing a bid. A special "green bid opening envelope" is included with the bid form so that bids, when received by Property Management, may be identified as such and not opened until the public bid opening. If the proposed lease includes a house or a commercial building, inspection of the interior will be arranged by Property Management personnel, including as many of the interested bidders as possible (open house). A bid form should be sent to each person who requested one and to the person who initially made the request to the District Office.

C. Sealed bids are opened immediately following the designated time, and are read aloud in public view by the Property Management Supervisor or designee. Another member of Property Management records the bids on a Bid Tabulation Sheet. The lease is awarded to the highest responsible bidder upon approval of the Property Management Supervisor and upon a determination that the proposed use would be consistent with Mn/DOT's management of the right of way. The Property Management Supervisor may determine that the high bid is not adequate, and that it does not justify Mn/DOT leasing out the land. In such case, the Property Management Supervisor may request to readvertise the lease for a second bid opening (with or without a minimum acceptable bid being specified), or may, after discussing the proposed lease with the District Right of Way/Land Management Engineer, decline to offer the lease until a later date. The Property Management Supervisor may also refuse to award a lease to any person who has defaulted under a prior Mn/DOT lease or who has been repeatedly delinquent in paying rent under the prior lease.

**502.6 RENT****A. AUTHORITIES**

The leasing statutes cited in 502.1, LEASING AUTHORITY, all contain a phrase stating that rent must be charged for the lease.

*Minn. Stat. 161.23, Subd. 3: "...for a fair rental rate..."*

*Minn. Stat. 161.433, Subd. 2: "...no...less than a fair rental rate..."*

*Minn. Stat. 117.135, Subd. 3: "...a reasonable rental..."*

*Minn. Stat. 161.431 (easement): "...for a fair rental rate..."*

Mn/DOT may make lands and rights of way available without charge to a publically owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

- ! The pertinent Federal Statutes which apply to rent in state leases are 23 USC §156 and §142(f) Public Transportation

**23 USC §156. Proceeds from the sale or lease of real property**

*(a) Minimum Charge. - Subject to Section 142(f), a State shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal (other than for utility use and occupancy or for a transportation project eligible for assistance under this title) of real property acquired with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account).*

*(b) Exceptions - The Secretary may grant an exception to the requirement of subsection (a) for a social, environmental, or economic purpose.*

*(c) Use of Federal Share of Income - The Federal share of net income from the revenues obtained by a State under subsection (a) shall be used by the State for projects eligible under this title.*

**23 USC § 142(f) Availability of Rights-of-Way:**

*In any case where sufficient land or air space exists within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, and highway and non-highway public mass transit facilities, the Secretary shall authorize a State to make such lands, air space, and rights-of-way available with or without charge to a publicly or privately owned authority or company or any other person for such purposes if such accommodation will not adversely affect automotive safety.*

**B. PROCEDURES**

When leasing property back to the former owner, annual rent should be set at eight percent of the amount which the state paid for the property. If the actual purchase price is not yet known, the state's certified value may be used. If the lease to the former owner departs from eight percent, the rationale for such departure must be documented, keeping in mind the above requirements for receiving a fair rental rate. Approximately once a year, the Property Management Supervisor may submit a request to

the Valuation Manager to review the above percentage figure as an approximation to market rent. (Currently the figure is eight percent.) Please contact the Property Management Unit for the appropriate rate.

If the prospective tenant is not the former owner, rent may be established either by sealed bids or by appraisal. (An appraisal may also be used to establish a minimum acceptable bid for a sealed bid opening.) If the District's request memorandum did not include an appraisal of rental value, the Property Management Supervisor may request an appraisal from the Valuation Manager.

As discussed in Section 502.8, the Mn/DOT lease will most likely contain a clause which allows Mn/DOT to cancel the lease upon giving the tenant short notice. This will make it more difficult to find comparable leases in the private sector for determining rental value, especially commercial leases, as such leases in the private sector do not generally contain such short notice periods for cancellations. The short term cancellation clause will make the determination of market rent more difficult (and more subjective). However, each lease file should contain documentation of how rent was determined.

### **502.7 GENERAL PROVISIONS OF LEASES**

In general, each commercial lease or residential lease will require the tenant to:

- A. Use the property only for certain stated purposes and only in compliance with applicable laws, regulations, and ordinances.
- B. Pay the rent and pay all utility bills in connection with the property when due.
- C. Permit agents and employees of the State to enter the leased area during reasonable business hours for inspection, surveying, or soil testing.
- D. Allow prospective bidders to view the property during reasonable business hours when the property is offered for sale.
- E. Not sublet or assign the lease or make any alteration of the property without written consent of the State.
- F. Pay the State all costs and expenses incurred in any successful legal action to recover unpaid rent or possession of the property, or expenses due to any breach of agreement contained in the lease.
- G. Permit the state to take back possession of the property upon tenant's default in paying rent when due or breach of any other substantial covenant of the lease.
- H. Permit the State to take back possession if the State exercise its rights under a lease cancellation clause. (See §502.7 below)
- I. Surrender the property at termination of the lease in as good order and condition as when the lease began. (A lease bond may be required to assure that this will be done.)
- J. Insure the property against loss from fire and purchase public liability insurance. Maintain the insurance protection for the entire term of the lease, and provide proof of the required insurance protection to the State.
- K. Indemnify and hold the state harmless from claims based on negligent acts or omissions of the tenant.

L. Nondiscrimination clause inserted in all leases.

M. Hazardous Materials clause inserted in all leases.

NOTE: Three types of standard lease forms are discussed in the next section. Copies of each are available from Property Management for review of lease clauses/terms.

## 502.8 STANDARD LEASE FORMS

The lease forms are to be in accordance with Minnesota Statute § 504.2, portions of subd. 2, 3 & 4:

*Subdivision 2. Disclosure to tenant. There shall be disclosed to the tenant either in the rental agreement or otherwise in writing prior to commencement of the tenancy the name and address of:*

*(1) the person authorized to manage the premises; and*

*(2) an owner of the premises or an agent authorized by the owner to accept service of process and receive and give receipt for notices and demands.*

*Subdivision 3. Posting of notice. A printed or typewritten notice containing the information which must be disclosed under subdivision 2 shall be placed in a conspicuous place on the premises. Unless the owner is required to post a notice required by section 471.9995, the owner shall also place in a conspicuous place on the premises a notice that states that a copy of the statement required by subdivision 4a, is available from the attorney general to any tenant upon request. This subdivision is complied with if notices posted in compliance with other statutes or ordinances contain the information required by subdivision 2 and this section.*

*Subdivision 4a. Disclosure statement; distribution. The attorney general shall prepare and make available to the public a statement which summarizes the significant legal rights and obligations of owners and tenants of rental dwelling units. The statement shall include descriptions of the significant provisions of this chapter and chapter 566. The statement shall notify tenants in public housing to consult their leases for additional rights and obligations they may have under federal law. The statement shall include the telephone number and address of the attorney general for further information.*

*The attorney general shall annually revise the statement provided in this section as necessary to ensure that it continues accurately to describe the statutory and case law governing the rights and duties of owners and tenants of rental dwelling units. After preparing the statement for the first time and after each annual revision of the statement, the attorney general shall hold a public meeting to discuss the statement and receive comments on its contents before it is issued. When preparing the statement and evaluating public comment, the attorney general shall be guided by the legislature's intent that the statement be brief, accurate, and complete in identifying significant legal rights and obligations, and written using words with common, everyday meanings.*

*Subdivision 5. Information required for maintenance of action. Except as otherwise provided in this subdivision, no action to recover rent or possession of the premises shall be maintained unless the information required by this section is known by or has been disclosed to the tenant at least 30 days prior to the initiation of such action. Failure by the owner to post a notice required by subdivision 3, or 471.9995 shall not prevent any action to recover rent or possession of the premises.*

*Subdivision 6. Notice to owner. Any tenant who moves from or subleases the premises without giving the owner at least 30 days' written notice shall void any provision in this section and section 504.23, as to such tenant.*

*Subdivision 7. Successors. This section extends to and is enforceable against any successor owner, caretaker, manager, or individual to whom rental payments for the premises are made.*

The Property Management Section uses three standard lease forms: Commercial Lease (two variations); Residential Lease; and Agricultural Lease.

! **Commercial Lease Form.** Typical types of uses which are accommodated by the Commercial Lease form are parking lots, existing advertising signs, and commercial buildings which have not yet been scheduled for demolition. If the lease is on a completed Interstate Highway, then Commercial Lease requiring FHWA approval should be used, as it contains specific mention of the FHWA in several clauses and is intended to meet certain requirements.

! **Residential Lease Form.** State law requires that a residential lease be written "using words with common and everyday meanings." (Minn. Stat. §325G.30, Subd. 3, PLAIN LANGUAGE CONTRACT ACT.) Also, Minn. Stat. §504.18 requires the landlord (i.e., Mn/DOT) to keep the leased residential property fit to live in and in compliance with health and safety laws and local ordinances. Therefore the Residential Lease Form does not require the tenant to assume these duties. See Section 502.11, Par. H (repairs) and Par. I (smoke detectors).

! **Agricultural Lease Form.** This brief lease form is used to lease out land for planting or grazing to a former owner or abutting owner along the highway.

One of the above standard lease forms will generally be suitable for most leases without modification. In those cases when a lease is to be modified or when additional clauses must be added, the Property Management Supervisor, as designee, should consult with a Special Assistant Attorney General before sending the proposed lease to the tenant for signature.

## 502.9 CANCELLATION OF LEASE

Each lease should contain a cancellation clause which allows Mn/DOT to reclaim possession of the land if it becomes needed for highway purposes. It would appear that a lease which does not have such a clause may not be consistent with the fact that the land was acquired by Mn/DOT "for highway purposes." A long-term lease without a short-term cancellation clause would preclude such use, unless the tenant voluntarily gave up the lease.

By the same reasoning, Mn/DOT generally does not allow a tenant to build any improvement on the leased-out right of way which cannot be removed readily by tenant (or by Mn/DOT) without undue cost or delay, if Mn/DOT must reclaim possession in order to use the land for highway purposes. Exceptions to this general statement involve long term airspace leases pursuant to Minn. Stat. §161.433.

While the above discussion would apply primarily to leases which were made after highway construction had been completed, even in those cases when the land is leased out prior to construction, a short-term cancellation clause (i.e. 30 days) may still be helpful, or may even become critical. Experience has shown that even when project letting dates are reasonably certain, sometimes preliminary work, by utility companies for example, is not subject to close scheduling by Mn/DOT. Unless the lease has a short-term cancellation clause (or unless the tenant voluntarily gives up the lease) the utility work would be delayed.

## 502.10 PROCEDURE FOR PREPARING A LEASE

The Director, Office of Land Management, or the Property Management Supervisor receives an office memorandum from the District Right of Way Engineer/Manager, the memorandum containing a request to prepare a lease and also containing the information necessary for preparing the lease.

The Director notes any comments on the lease request memo and forwards it to the Property Management Supervisor.

The Property Management Supervisor reviews the lease request memo and determines if additional information or clarification is needed from the District R/W Engineer. The Property Management Supervisor will determine if modifications to a standard lease form may have to be made to accommodate the specific leasing situation.

The Property Management Supervisor assigns lease to Property Management personnel for carrying out the following steps in conjunction with Property Management Supervisor:

1. The lease form is prepared.
2. When appropriate, the lease is advertised for bids. (For procedure, see §502.4B).
3. When FHWA approval is required (see §502.10), Property Management prepares a letter to the Division Administrator of the Federal Highway Administration for signature by the Property Management Supervisor, requesting FHWA approval of the proposed lease. As described in §502.10, the letter must be accompanied by appropriate attachments. FHWA will review the request and advise the Property Management Supervisor whether the lease has been approved or not approved, and if approved will set forth any special stipulations FHWA may require for approval.
4. Three unsigned copies of the lease are sent to the prospective tenant, along with a letter requesting initial rent payment and evidence of insurance coverage. If the lease requires prior FHWA approval and such approval has not yet been received, the letter to the prospective tenant should state such fact.

At the same time that the lease is sent to the prospective tenant, a copy of the unsigned lease is sent to Mn/DOT Financial Administration, Accounts Receivable, (See Par. G also.)

5. Three signed leases are received from the prospective tenant along with initial rent payment and evidence of insurance. (As required by the lease, rent payments will usually be sent in directly to Financial Administration. A certificate of insurance will come in directly from the tenant's insurance agent rather than from the tenant).

If a signed lease is not returned by the prospective tenant within a reasonable time after the lease was sent out by Property Management personnel, the District Right of Way Engineer/Manager should be so informed in the event the prospective tenant is using the land without having a lease. Regardless, the District Right of Way Engineer/Manager would want to know that the proposed lease deal was never completed.

6. The three signed copies of the lease are then forwarded to the Director for signature. If the lease is one requiring prior FHWA approval, the lease should not be forwarded to the Director until the FHWA approval has been received.
7. The three signed copies are then sent on to the Office of Attorney General for approval and signature as to form and execution. (If the lease departs from or adds to one of the standard R/W lease forms, consideration should be given to securing the attorney's approval as to form before the lease is sent to the prospective tenant under Par. 4 above.)

8. 5 lease copies are distributed as follows:
  - One of the executed originals is mailed to the tenant.
  - Another original is kept in the Property Management lease file.
  - An original of the executed lease is sent to the respective Record Center parcel file(s).
  - A copy is sent to the District R/W Engineer.
  - A copy to Mn/DOT Accounts Receivable.

## 502.11 FHWA INVOLVEMENT

### ENVIRONMENTAL REQUIREMENTS

The National Environmental Policies Act (NEPA) requires that environmental consequences be evaluated wherever a Federal approval is required.

For reconveyances, temporary use permits, leases, and access control changes, which have little or no impact on the environment, this was satisfied by the Programmatic Environment Assessment (EA) prepared by Mn/DOT and the Finding of No Significant Impact (FONSI) issued by FHWA on May 18, 1984. "Little or no impact on the environment" means the proposed action will not affect an environmentally sensitive area, such as a wetland, floodplain, archeological or historical site, or critical habitat for rare or threatened and endangered species. By issuing the FONSI, the FHWA has determined, in advance, that these types of actions will not significantly impact the environment. For actions which do involve environmentally sensitive areas, and therefore do not fall under the above-mentioned EA and FONSI, an environmental analysis must be made of the proposed action by Mn/DOT and concurred in by FHWA.

### LEASE APPROVAL

The Transportation Equity Act for the 21<sup>st</sup> century (TEA-21) allows FHWA approval actions to be delegated to Mn/DOT. Under this program, FHWA has delegated to Mn/DOT approval action for leases on Federal-aid highways other than highways on the National Highway System.

### CORRESPONDENCE WITH FHWA

FHWA approval is needed for Mn/DOT action in the following categories:

- ! Leases on the National Highway System.
- ! Leases that do not fall within the 1984 FONSI (e.g., the proposed action is environmental sensitive). An environmental analysis must be made by Mn/DOT, and FHWA concurrence in the environmental analysis is required.

Approval requests submitted to FHWA must contain the following:

- ! Right of way maps showing the proposed lease,
- ! Background information and copies of letters, etc., which would aid FHWA personnel in understanding the setting for the proposed lease, and,

- ! A statement that the proposed action falls under the 1984 FONSI, or if it does not, the environmental analysis prepared for the action must be included.
- ! A statement that Federal funds did (or did not) participate in the acquisition of the right of way.

## 502.12 ADMINISTRATION OF LEASES

A. ADMINISTRATION. Administration of leases of highway right of way is by the Property Management Unit, Office of Land Management. However, complaints by tenant's neighbors or city officials regarding the tenant's activities will usually be referred to the District Right of Way Engineer/Manager for investigation and recommendation.

B. INSURANCE. Except for the agricultural lease form, each of the standard lease forms requires the tenant to carry liability insurance and, depending on the value of the state's building, also carry fire insurance. The insurance requirements and limits of coverage are specified in each lease. Upon the tenant's purchase of insurance, the insurance agent should send directly to Property Management a Certificate of Insurance. (The agent may need reminding). The Certificate of Insurance describes, usually on a single page, a summary of the insurance which has been purchased by the tenant, and is deemed to be the evidence of insurance which the lease requires. The Certificate may be inadequate in one or more ways and the tenant or the insurance agent will have to be contacted, as discussed below. Each Certificate of Insurance will show the date a policy will expire. These various dates are transferred to a monthly review system so that each month a determination can be made if the several policies which will expire that month have been renewed, or more accurately, whether the state has received evidence of renewal. (The insurance policies seldom expire on the same date that the related lease will expire.) If an insurance policy has expired, or is about to expire, the tenant is contacted in writing, setting out a final date for submitting evidence of insurance coverage. Two checklist forms are available to Property Management personnel which can be used both in reviewing certificates of insurance and in notifying a tenant that the certificate on file has elapsed or is otherwise not adequate in some respect. The insurance clauses of the standard commercial or residential lease are repeated at the bottom of each form for the convenience of the tenant and tenant's insurance agent, in the event tenant wishes to forward the notice to the agent. When the tenant is a municipal corporation or some other political subdivision, it is not uncommon to receive a statement of self-insurance signed by the city attorney or other appropriate representative. This statement is accepted in lieu of a Certificate of Insurance. Self insurance coverage by a political subdivision of the state is allowed by Minn. Stat. §471.981.

C. LEASE RENEWAL. A monthly review system is kept, showing for each month the dates of leases expiring in that month. Approximately five weeks before a lease will expire, a standard form Rental Approval Memo is forwarded to the Right of Way Manager, for approval (signature) by the District Right of Way Engineer. It asks how long a renewal lease should be made for and provides a place for the District Right of Way Engineer comments. The anticipated date or scheduled date of a highway construction letting is the primary consideration in setting the term of the lease, and the reason for getting the District Right of Way Engineer's recommendation before renewing a lease. The District Right of Way Engineer may also decide that the current lease has caused too much trouble for District personnel or neighbors, and may recommend to not renew. Although a lease is usually renewed to an existing tenant, Mn/DOT is under no obligation to do so.

D. UPDATING RENT. When a lease is renewed, rent is revised to take into account any change in the Consumer Price Index (CPI) since the beginning of the lease. For updating rent for commercial leases, the CPI used by Property Management is designated as "the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items, All Urban Consumers." For updating rent for residential leases, the Residential Rent index (U.S. City Average) is used. (The Property Management Unit may be on the mailing list for receiving monthly index reports from the Bureau of Labor Statistics.) The rent adjustment computation should be retained

in the lease file, including an identification of the month and year for each CPI used in the computation. As an alternative to making the CPI adjustment, the Property Management Supervisor may request a new rental value appraisal from the Valuation Manager when it appears that rent received under the current lease may not represent a reasonable rent. If the term of a lease will exceed two years, consideration might be given to inserting a rent escalator clause in the lease so that rent would be adjusted on specific dates or at specified intervals during the lease term, based on the change in the CPI.

E. COUNTY SHARE OF RENT. Minn. Stat. §161.23, subd. 3, provides that 30 percent of rent received must be paid to the county treasurer of the county where the leased land is located, for distribution by the county in the same manner as real estate taxes. The 30 percent is computed on rent actually received after deducting expenses of repairing leased property (Mn/DOT will repair only residential property). The Office of Finance Administration receives all rent payments and in turn makes payment of the 30 percent to the various counties affected. Twice each year Finance Administration turns out a report which lists all leases in each county and the net rent collected under each lease. The report also shows the amount payable to each county based on the above statute. The periods covered by the reports are January 1 through June 30 and July 1 through December 31 of each year. Copies of the report are available from Property Management.

#### F. COLLECTION OF RENT OR EVICTION

1. Once each month Accounts Receivable will send to Property Management a computer print-out sheet showing which tenants are behind in rent payments.

2. Upon determining that a tenant has become more than one month behind in payment of rent, Property Management personnel will send a letter to the tenant specifying a date by which all back rent must be paid up along with the next due rent payment. (The Property Management Supervisor may decide that the circumstances justify allowing the tenant the opportunity to pay off the back rent in installments over a reasonable period.)

3. If the tenant does not pay the agreed rent, Property Management personnel will send tenant a notice by certified mail terminating the lease and specifying the date when tenant must be out.

4. If the tenant does not vacate the premises, Property Management personnel will send an office memorandum to the office of Attorney General representing Mn/DOT, asking for legal action to secure the eviction of the tenant and, if possible, collection of back rent. (In Minnesota, an action to collect back rent must be made separate from the eviction action. The two cannot be combined.)

5. Property Management personnel will assist the attorney to the extent requested.

6. If the legal action involves an eviction only and no separate action is pursued for a collection of rent, then an office memorandum should be sent to the collections unit of Financial Operations requesting that a claim be placed against the tenant under the Revenue Recapture Act, Minn. Stat. Chap. 270A.

G. PAYING FOR REPAIRS TO RESIDENTIAL PROPERTY. As a landlord of residential property, Mn/DOT must make repairs to keep the various leased residences habitable. Minn. Stat. Chapter 504, LANDLORDS AND TENANTS, §504.18 provides in part as follows:

#### ***Minnesota Statutes 504.18 COVENANTS OR LESSOR LICENSOR***

***Subdivision 1. In every lease or license of residential premises, whether in writing or parol, the lessor or licensor covenants:***

- (a) *That the premises and all common areas are fit for the use intended by the parties.*
- (b) *to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the lessee or licensee or a person under the direction or control of the lessee or licensee.*
- (c) *To maintain the premises in compliance with the applicable health and safety laws of the state and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the lessee or licensee or a person under the direction or control of the lessee or licensee.*

NOTE: The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section. (Emphasis added.)

The State will pay for basic repairs which become necessary to keep a leased residence in a habitable condition. For example, Mn/DOT will pay for repairs to (or replacement of) furnaces, water heaters, plumbing, etc. But, this applies only to leased residential properties. It does not apply to commercial leases.

A representative of the Property Management Unit will verify that the work is actually needed, and after being billed, that the work was actually done. The extent of such verification will take into account the nature and cost of the repair work. Documentation will be kept with the lease file.

If the tenant has paid the contractor directly for work done, the Property Management Unit will send a request to the Mn/DOT Accounts Receivable to credit the tenant's rent payment account in the amount paid by the tenant. However, if the tenant has not yet paid for the work done, the Property Management Unit will forward the invoice to Financial Administration for payment.

Before paying for major repairs, the Property Management Supervisor may require the repair contractor to furnish Mn/DOT with a bond covering payment for labor and material or acknowledgments (lien waivers) by subcontractors and material suppliers that they have been paid. (They will not be able to put a mechanics' lien on state property.) If the repair contract is for an amount \$10,000 or more, such a bond must be provided by the contractor.

Finance Accounting will deduct these repair and maintenance costs from gross rental income before computing the 30 percent distribution to the various counties under Minn. Stat. §161.23, Subd. 3.

**H. SMOKE DETECTORS IN LEASED RESIDENCES.** Property Management personnel should verify that each leased out house has one or more smoke detectors which have been permanently wired into the house central electrical system (not battery-operated). Each occupied level of a house must have a smoke detector. If a rented house does not have an adequate number of wired-in smoke detectors, arrangements should be made with the tenant to get the work done, with the state paying for the work as explained above for house repairs. If the tenant does not cooperate, so that an electrician contacted by Property Management personnel is not able to gain entry to get the work done, the file should be documented of such fact and consideration given to cancelling the lease (for failure to comply with local codes).

Regarding leased houses already having wire-in smoke detectors, approximately once a year the Property Management Supervisor should consider sending a form to each tenant asking that the smoke detectors be checked and, if not working, to notify Property Management, and then to get the devices repaired or replaced at state expense, as discussed above. Each smoke detector is to be wired in by a licensed electrician in the manner and location specified in the manufacturer's instruction sheet accompanying each smoke detector. Smoke detectors are required in rented houses under Minn. Stat. §299F.362 and various city ordinances.

### 502.13 LEASING OUT HIGHWAY EASEMENT LAND

The leasing laws which have previously been discussed in this Section 502 all pertain to leasing out land which the state owns in fee simple, i.e., complete ownership. However, much of the highway land acquired prior to the late 1950s was in the form of an easement for highway purposes, and generally, the highway easement could not be leased out. To remedy this, in 1983 the legislature permitted Mn/DOT to lease out land acquired in easement upon complying with certain prerequisites. The law is Minn. Stat. 161.431:

#### **161.431 LEASING OF HIGHWAY EASEMENTS**

*The commissioner may lease to the fee owner for a fair rental rate and upon terms and conditions that the commissioner deems proper, an easement in real estate acquired for trunk highway purposes and not then needed for trunk highway purposes. If the fee owner refuses to lease or if after diligent search the fee owner cannot be found, the commissioner may lease the easement to an agency or to a political subdivision of the state on terms and conditions agreed upon, or the commissioner may lease the easement to the highest responsible bidder upon three weeks published notice of the lease offering in a newspaper or other periodical of general circulation in the county where the easement is located. All bids may be rejected and new bids received upon like publication. All rents received from the lease must be paid into the state treasury. Seventy percent of any rent received is to be credited to the trunk highway fund. The remaining 30 percent is to be paid to the county treasurer of the county where the easement is located for distribution in the same manner as real estate taxes.*

The request letter from the district should contain documentation, supplied by District Right of Way personnel, of the efforts made for satisfying the various findings called for in the statute. A "diligent search" to find the fee owner will require a reasonable effort based on the circumstances of each case. Such documentation will be retained in the lease file. The request memo from the district office will otherwise follow Section 502.2.

The advertisement of the lease for sealed bids may use the following example:

Pursuant to Minnesota Statutes, Section 161.431, the Commissioner of Transportation advertises for leasing the following described land (formerly owned by \_\_\_\_\_):

(Legal Description)

Lease Term: \_\_\_\_\_ years.

For further information or for requesting a bid form phone \_\_\_\_\_ at \_\_\_\_\_ District Office, Minnesota Department of Transportation.

Bids must be received on the furnished bid form only by \_\_\_\_\_ a.m., \_\_\_\_\_ (date), at Mailstop 631, Department of Transportation, 395 John Ireland Blvd., St. Paul, Minnesota 55155.

S.P. \_\_\_\_\_

Parcel \_\_\_\_\_

Ad to appear in \_\_\_\_\_ (title of publication)

Dates of publication \_\_\_\_\_

Except for being advertised for three weeks instead of one week, the advertising process will be the same as set out in Section 502.3. The ad must run once a week for three successive weeks, with the last ad appearing at least seven days before the day of the bid opening.

**PROPERTY MANAGEMENT (5-491.500)**  
**PUBLIC SALE OF LAND BY BIDS (5-491.503)**

**503.1 INTRODUCTION**

The land sale procedures described in this section of the R/W Manual may be thought of as continuation of the conveyance procedures which are set out in the Reconveyance section of the manual. See 5-491.801.

Paragraph 24 of 5-491.801.8, RECONVEYANCE PROCEDURE, is repeated here, with underlining to illustrate the connection between the operations of the Reconveyance Unit and the Public Sale of Land by sealed Bids under this section 503 of the Manual.

Reconveyance Unit	Prepares offer letter to eligible person or entity setting out the required price and deadline date for accepting this offer. Letter is signed by Director. <u>If no person or entity is eligible under the above statutes to receive an offer directly, or if the person or entity otherwise eligible refuses to pay the appraised value (the asking price), then the file may be forwarded to the Property Management Supervisor for selling by public bids.</u> The person or entity otherwise eligible may be advised of such action. (The sale of land by sealed bids is covered elsewhere in this Manual.) <u>If the land was purchased as excess under Minn. Stat. §161.23, the file should likewise be forwarded to the Property Management Supervisor for selling by public bids.</u>
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Thus, when a file comes to the Property Management Supervisor with a request to sell the land by bids, it may be assumed that all preliminary steps have been complied with by the Reconveyance Unit and that the Property Management Unit may proceed with advertising for bids as described in this section of the Manual.

**503.2 AUTHORITY**

The authority for the Commissioner of Transportation to sell (by sealed bids) land which was bought in excess of what was needed for trunk highway purposes is found in Minn. Stat. §161.23, Subd .2, "Conveyance of excess".

The authority for the Commissioner of Transportation to sell (by sealed bids) land which is "owned in fee by the state for trunk highway purposes but no longer needed therefor" is found in Minn. Stat §161.44, Subd. 4 and 5.

The above statutes are printed in 5-491.801.2 of the Manual (Reconveyance; Authority) and will not be repeated here.

**503.3 PUBLIC NOTICE OF SALE**

Apart from the additional requirement of mailing notice to adjacent landowners (that is specifically required for the public sale of "excess land"), the published notice requirements for the sale of "excess land" and of "right of way land no longer needed for highway purposes" may be considered the same.

Minn. Stat. §161.23, Subd. 2, requires:

. . . . published notice of the sale for three successive weeks in a newspaper or trade journal of general circulation in the territory from which bids are likely to be received . . . .

Minn. Stat. §161.44, Subd. 5, requires:

. . . . three weeks published notice of such sale in a newspaper or other periodical of general circulation in the general area where the lands are located . . . .

For our purpose of placing the advertisement (the public notice), the requirements of both statutes may be considered to be the same.

The advertisement may be placed in a newspaper, or a trade journal, or other periodical of general circulation. (The term "general circulation" means that the publication can be purchased by anyone; it is not restricted to a certain occupational group or class of persons).

The advertisement must run for three successive weeks. The term "successive weeks" is defined in Minn. Stat. §645.13:

645.13 TIME; PUBLICATION FOR SUCCESSIVE WEEKS.

When the term "successive weeks" is used in any law providing for the publishing of notices, the word "weeks" shall be construed as calendar weeks. The publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in "successive weeks" shall elapse between the first publication and the day for the happening of the event for which the publication is made.

The following example would comply with the above statute:

A small town Minnesota newspaper is chosen which publishes every Wednesday. The first ad appears on Wednesday, April 4. The second on Wednesday, April 11. The third on Wednesday, April 18. In such case, the bid opening must not be sooner than Thursday, April 26.

There is no requirement that the publication be in the same county where the property is located. Many times the nearest city is just across the county border and such city newspaper would be the logical choice for the publication of the advertisement. In order to get the best exposure for selling, the ad or notice will usually be placed in the "Land For Sale" or "Vacant Land" or "Lots and Acreage" or similar column of the newspaper or other publication. It is not necessary that the notice be placed in the "Legal Notices" column. A person interested in buying land would probably not look there and such placement is not required by law.

The Minnesota Newspaper Association publishes a directory of Minnesota newspapers called the Newspaper Directory. Property Management will select an appropriate publication from the Newspaper Directory and place the ad. The Newspaper Directory (a copy is available in C.O. Right of Way) lists the various newspapers in each county and also lists them alphabetically by city. It gives the circulation of each publication, day(s) of publication, and the last day for receiving an ad prior to publication.

The public notice in the newspaper publication must contain enough information about the property being advertised for sale to allow the reader to determine the basic facts about the sale and to decide if additional, more detailed, information should be requested.

The newspaper advertisement must contain the following minimum information:

A brief description of the land being offered for sale. (See further discussion below regarding description of the land.)

A reference to the required bid form and bidding instructions - and how the reader can get a copy.

A statement of the time, date, and place of the bid opening.

Minimum bid (if any). If a minimum bid is to be specified in the ad, the following statement is suggested: "Bids below (amount) will not be considered."

Any other information which the Property Management Supervisor thinks might be persuasive in helping the reader decide whether or not to request a bid form.

Although not specifically required by either of the above statutes (Minn. Stat. §161.23 and Minn. Stat. §161.44), bid forms should be mailed to all persons who have requested a bid form for the specified land being advertised. (After bid forms have been mailed out, the Property Management should sign and date a list of persons being sent bid forms for a record of such fact for the land sale packet.)

Although not required by statute, a notice of the bid opening (or copy of the bid form) is posted on the public bulletin board reserved for such notices. This public bulletin board is located in the Office of Land Management, in a location accessible to the public. There is no minimum time required, but convenience might dictate posting at the same time the advertisement is mailed to the newspaper or at the same time bid forms are mailed to persons who have requested a bid form.

In some instances, the legal description of the land to be sold can run into several hundred words, covering a page of single-spaced type. The publication of such a legal description can be costly, especially if published in the major newspapers of St. Paul, Minneapolis, or Duluth. Also in some cases, the length of the legal description is in large part due to describing beginning points or curves along the centerline or right of way line at a considerable distance from the tract being sold. This makes the advertisement more confusing. Thus, in many cases, the legal description is abbreviated in the advertisement. (Any interested person, upon seeing the advertisement can request a bid form. The bid form will contain the complete legal description.)

For such cases, the following sample advertisement containing an abbreviated "legal description" is offered as an example:

SALE OF EXCESS LAND  
STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
ST. LOUIS COUNTY  
EX H-109 - Approx. 0.53 Acre

Sealed bids for the purchase of lands described below will be received in the Office of Land Management, Mailstop 631, State Transportation Bldg., St. Paul, MN 55155; Telephone XXX-XXXX, until 10:30 A.M. on December 27, 2000, at which time bids will be publicly opened and read aloud.

Parcel 242 S.P. 6982 (35=390) 910 1-035-06 (14) 245.  
Part of the Southeast Quarter of the Southeast Quarter of Section 16, Township 49 North, Range 15 West.

SAID TRACT LOCATED ADJACENT TO T.H. 35 AND  
COUNTY STATE AID HIGHWAY NO. 45.

Information and bid forms pertaining to the above referenced tract may be obtained by contacting r, Dist. R.W. Engr., Duluth, 55801; Telephone (XXX) XXX-XXXX.

Each bid must be accompanied by a CERTIFIED CHECK, CASHIER'S CHECK, OR MONEY ORDER IN THE AMOUNT OF 5% of the bid price.

The right is reserved to reject any or all bids and to waive informalities therein.

(Name of Commissioner)  
Commissioner of Transportation  
Ad: Duluth Herald December 1, 8, 15, 1990

(The Office of Attorney General has advised that such abbreviation of the legal description in the advertisement is permissible.)

#### 503.4 THE BID FORM

The complete proposal for a land sale offering is made up of the following parts:

Bid Form for Sale of Land

Non-collusion Affidavit (Mn/DOT Form No. 21297)

Description For Reconveyance (Exhibit A of bid form)

Green bid return envelope (with reference to sale number and time and date of bid opening)

A sample Bid Form for Sale of Land is set out below:



Although a right of way map is not part of the bid form, Property Management will usually include a map showing the portion of the right of way containing the tract being offered for sale. The map will allow the bidder to determine the general location of the land and to aid the bidder in tracing through the legal description.

### 503.5 SALE PROCEDURE

The sale procedure described in this section is intended to meet the requirements of the applicable laws, namely:

Minn. Stat. §161.23, Excess Acquisition, Subd. 2, Conveyance of Excess.

Minn. Stat. §161.44, Relinquishment of Lands no longer needed.

As with all public bidding laws, the dual objective is to stimulate competition and at the same time prevent favoritism or fraud when sale contracts are awarded. It follows that the application of the sale procedure must be uniform and consistent as to all bidders. When a bidder participates in a public bid opening for the sale of state-owned land, that bidder is entitled to feel assured that all of the other bidders for the same property will be bound by the same rules.

(It may be appropriate to mention at this point that the complete bid form and the basic award procedure described herein have been approved by the Office of Attorney General.)

The sale procedure is administered by Property Management Personnel, acting under the general supervision of the Property Management Supervisor.

Property Management Personnel will be responsible for distributing copies of forms or correspondence to those persons who should be put on notice of an advertisement or a sale: This may, for example, include the Reconveyance Unit Technician, District Right of Way Engineer/Manager, District Maintenance Engineer, Right of Way Finance Accounts Receivable, and the FHWA. (Distribution of such copies will not be discussed herein as to the individual steps of the sale procedure.)

Many forms are used in the sale procedure. If the material is on a printed form or in the word processor computer memory, then the form number or retrieval number will be given. Otherwise a brief description of the operative parts of the notice, letter, etc., will be given.

When the title "Director" appears below, it will mean Director, Office of Land Management.

#### PROCEDURE:

1. Receive parcel files for the parcels (or parts of parcels) to be sold by bids.
2. Check Reconveyance Unit notations and captions of legal description sheets to determine whether all or any part of the land to be sold was purchased as "excess" pursuant to Minn. Stat. §161.23. If the land is "excess land" the law requires that a notice of the proposed sale be mailed to adjacent landowners. This is a requirement only for the sale of excess land; it is not required for the sale of highway right of way land.
3. Check file for offer letter (if any) to former owners (or other qualifying person or entity). It may be that the former owner was not willing to pay the state's appraised value but wants to bid on the land. Reconveyance Unit personnel may have assured former owner that a bid form would be sent. If uncertain, discuss with Reconveyance Unit Technician. If former owner was not eligible for direct offer, or could not be found, such fact will be indicated in the file.

4. Check file for names and addresses of other prospective bidders, especially persons who have asked to be sent a bid form when the land eventually would be put up for bids.
5. Become somewhat familiar with the nature of the land being offered. Read the appraisal report to find out the general setting and surroundings, appraised value, zoning, area, improvements (if any). Determine if there are any wells on the land (see 5-491.801.6, Disclosure of Wells).
6. Assign the next consecutive number to the land for sale offering. This will be the ExH\_\_\_\_\_ number. For next available number see ledger containing record of all land sale bid offerings and awards.
7. Select a newspaper (or other publication of general circulation). In most cases this will be the newspaper of the town closest to the land. The advertisement must run three times for three consecutive weeks. Allow seven full days after last publication before the bid opening. This is the minimum time. Generally, about six weeks total is adequate to prepare, to advertise, and hold to the bid opening.
  - a. Prepare newspaper advertisement
  - b. Prepare bid form.
  - c. Have Exhibit A typed on the top of a copy of the legal description sheet. It is preferable that the legal description not be retyped.)
  - d. Determine from parcel file if special mention of wells must be made on the bid form. Otherwise the standard wording (to appear on the bid form) will be: "The Seller certifies that the Seller does not know of any wells on the described real property."
  - e. Prepare map showing location of land. Highlight tract to aid bidder.
8. Submit the typed Bid Form and advertisement to the Property Management Supervisor for approval.
9. Prepare cover letter for sending advertisement to newspaper. Request that an Affidavit of Publication be returned with invoice. Give cover letter and two copies of advertisement text to the Office of Land Management Office Manager. Office Manager will send the advertisement to the newspaper and will later process the invoice for the advertisement.
10. Set bid opening date on calendar.
11. Mail out bid forms.
  - a. To each person who has indicated a desire to bid on the specific land being offered for sale.
  - b. To former owner (if file indicates a reason for doing so).
  - c. To abutting landowners. This is required by law for the sale of "excess land". It is not required for the sale of right of way land, but in some cases the Property Management Specialist may want to send abutting owners a bid form, especially if a "For Sale" sign is not placed on the land.
  - d. Keep list in sale packet of all persons who were sent a bid form.

12. Notify District Right of Way Engineer/Manager to have District Maintenance place a "For Sale" sign on the land. The sign notifies the public that the state is selling the land and gives a telephone number to call (either local District Office or Central Office Land Management). Whether to place a for sale sign on the land is discretionary. It is not required by law and in some cases may serve no purpose, assuming abutting owners have been notified.
13. Time stamp each green bid envelope as it is received in the Property Management Office. Place each envelope (unopened) in the sale packet set aside for that bid opening. From time to time, the mailroom may have to be again put on notice to be on the lookout for green bid envelopes so as to forward to R/W promptly. This is especially important on the day of the bid opening.
14. On the day of the bid opening, shortly before the time scheduled for the opening, prepare a bid tabulation sheet. The bid tab sheet should show the parcel number and sale Ex H reference number. For convenience, so that it will not have to be done during the bid opening, the names of bidders (as shown on the green envelope return address) may be typed in.
15. Conduct the bid opening.
  - a. Conduct the bid opening as soon as the time deadline for receiving bids has passed.
  - b. Green bid envelopes are opened one at a time. The name of the bidder, the amount bid for each item offered, and the amount submitted for the bid deposit are all recorded for each bid envelope. This is done before the next bid envelope is opened.
  - c. The bid opening is conducted by two Office of Land Management employees.
  - d. Following the bid opening, a Property Management employee should sign the bid tabulation sheet, thus certifying that the sealed bids were opened and read in public at the time stated on the form.
  - e. The bid tabulation sheet may be on a preprinted form or it may be generated for each separate bid opening.
  - f. The bid opening process is in the nature of a ministerial task. It consists of opening each sealed bid envelope, announcing the amount of the bid, the amount of the bid deposit, and the name of the bidder. It is done in public view. It is important that the process be kept orderly. It is not the time for bidders to discuss seeming defects in the bids of others for example. It is merely a reading of the bids, and Property Management Personnel must exercise the necessary authority to control the orderliness of the process. It might even be suggested that the Property Management Personnel be ready with a prepared reply, such as: "All bids are subject to review by the Director. If it is uncertain that any bid is defective, it will be shown to a lawyer in the Office of Attorney General and we will get an opinion on whether the bid may be accepted or not."
  - g. The bid tabulation sheet and all of the original bids are thereafter open to public inspection.
16. Submit the bid tabulation sheet to the Director for approval to award the land sale. Include any background information to aid the Director, such as the appraisal and whether a minimum bid was specified in the bid form. The Director will indicate acceptance or rejection of the high bid on the bid tab sheet, will initial it, and will return it to the Property Management Supervisor.
17. Upon getting approval of the high bid, prepare an award letter to the successful bidder. The award letter will be prepared for signature by the Director. Mail the award letter to the successful bidder

along with a copy of the bidder's signed bid form, a copy of the printer's affidavit of publication, and the "grantee form".

- a. If an affidavit of publication has not yet been received from the newspaper, then send a copy of the text of the ad, dates of publication and name of newspaper. (Some newspapers are slow in returning affidavits of publication.)
  - b. The "grantee form" merely asks the successful bidder to name the exact spelling and name (or names) of grantee as it will appear on the state's quitclaim deed. It also asks the bidder to designate if multiple grantees are to take title as tenants in common or as joint tenants. (This information will later be forwarded to the Reconveyance Unit when the deed is to be prepared.) It is best not to attempt to advise the purchaser as to the legal effect of taking title as joint tenants versus taking title as tenants in common. The purchaser should seek independent legal advise on this matter.
  - c. Basically, the award letter notifies the high bidder that the bid has been accepted by the Office of Land Management, and it then goes on to instruct the bidder on the remaining dollar amount due and the due date, consistent with the bid form.
  - d. For follow-up purposes, set the due date on the calendar.
18. Return the bid deposit checks of all other bidders (the unsuccessful bidders) along with a brief written explanation such as, "unsuccessful bid". If all bids are rejected, then all bid deposits will be returned, along with a brief explanation such as, "All bids too low; land to be re-advertised". When all bids are rejected, those bidders from whom bids were received at the first bid opening should also be sent a bid form for the next opening. Bid deposits are generally returned within two working days following the bid opening.
19. Forward the bid deposit check of the successful bidder to Finance Office (Accounts Received Cashier) for depositing. Include appropriate reference documentation.
20. If the successful bidder has not made final payment by the due date as specified in the award letter, then prepare a bid forfeiture notice letter for the Director's signature. The forfeiture letter will notify the high bidder that the offer of sale is no longer open and that the bid deposit (10 percent) has been forfeited by the bidder and deposited by the state.
21. Record Keeping
- Keep the original of the bid tabulation sheet in the sale packet. Sale packets are retained in the Office of Land Management. Place a copy of the bid tab sheet and a copy of the award letter (and any other pertinent correspondence such as a forfeiture letter) into the parcel file (or parcel files as the case may be).
- Fill in sale data in the Land Sale Inventory Log: name of high bidder, amount of bid, number of bids, cross reference to prior attempts to sell, etc.
22. When final payment is received, forward it to Finance Accounts Receivable Cashier. Accounts Receivable will send back a deposit transmittal sheet within a few days. (A similar deposit transmittal is sent for showing that the 10 percent bid security of the high bidder was deposited.)

23. Contact District Right of Way Engineer/Manager to advise whether to remove the on-site sign or to leave it in place to generate interest for a new bid opening to be scheduled.
24. Prepare memorandum transferring parcel files back to the Reconveyance Unit along with information sufficient for the Reconveyance Unit to prepare a quitclaim deed to the high bidder (purchaser).

### 503.6 ACTION IN LIEU OF BIDS

Minn. Stat. § 161.44, Subd. 6 provides:

Subd. 6. **Public auction.** In lieu of the advertisement for sale and conveyance to the highest responsible bidder, such lands may be offered for sale and sold at public auction to the highest responsible bidder. Such sale shall be made after publication of notice thereof in a newspaper of general circulation in the area where the property is located for at least two successive weeks and such other advertising as the commissioner may direct. If the sale is made at public auction a duly licensed auctioneer may be retained to conduct such sale, the auctioneer's fees for such service to be paid from the proceeds, and there is appropriated from such proceeds an amount sufficient to pay such fees.

(There is no similar provision in Minn. Stat. § 161.23 for the sale of "excess land" by public auction.)

## AUCTION &amp; ADVERTISEMENT (SAMPLE)

STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
SALE OF SURPLUS LAND  
NOTICE OF AUCTION

The Department of Transportation will hold a public auction at \_\_\_\_\_ PM on \_\_\_\_\_, 20\_\_, in the Office of Land Management, 395 John Ireland Boulevard, Mailstop 631 Transportation Building, John Ireland Boulevard, St. Paul, 55155 and will sell to the highest bidder the following land:

Part of Lots 1, 2 and 4, Whitacre, Brisbine and Mullen's Subdivision of Lots 1 and 2 of Leech's Addition of Outlots to the Town of St. Paul, Ramsey County, Minnesota.

(The approx. Area of this land is 9227 Sq. Ft. The general location is adjacent to I-35E highway right of way in the vicinity of Douglas Street Cul-de-sac and Grand Avenue.)

A complete legal description of the land and a copy of the Terms and Conditions of Sale are available upon request at the Transportation Building, Property Management Unit, Mailstop 631, or by telephone (651) 296-3228. Refer to: EXH-303. S.P. 6280 (35E=390) 915 Parcels 99A, 99B, 99F; and Parcels 99D, 299D, 99E, 99G.

Bids below \$87,600.00 will not be considered.

Prior to auction, each bidder must deposit with the Director, Office of Land Management, a certified check, cashier's check or money order made payable to "Commissioner of Transportation" in the amount of \$8,760.00. Purchaser will forfeit such deposit if purchaser should fail to comply with the Terms and condition of Sale.

AD: St. Paul Legal Ledger

(Name of Commissioner)  
COMMISSIONER OF TRANSPORTATION

TERMS AND CONDITIONS OF SALE (SAMPLE)

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
OFFICE OF LAND MANAGEMENT
395 JOHN IRELAND BOULEVARD
ST. PAUL, MINNESOTA 55155
TEL. (651) 296-3228

EXH - 303
County of Ramsey
S.P. 6280 (35E=390) 915
Parcels 99A, 99B and 99F;
99D, 299D, 99E and 99G
Authority: Minn. Stat. 161.44

SALE OF LAND BY AUCTION
TERMS AND CONDITIONS OF SALE

A public auction will be held in the Office of Land Management, State Transportation Building, St. Paul, Minnesota at \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.

The land being offered for sale is described on the attached EXHIBIT "A" (consisting of two sheets). This land will be sold as one bid item.

All bidders should inspect the property and inform themselves of existing conditions. Purchaser agrees to pay all assessments (current or delinquent) and deferred installments of assessments, if any, heretofore or hereafter levied against said real estate.

The State of Minnesota will not furnish an abstract of title to the above described real estate.

An employee of the state or a political subdivision of the state (city, county, etc.) may not purchase state land (Minn. Stat. Sect. 15.054).

Bids below \$\_\_\_\_\_ will not be considered. Prior to auction each bidder must deposit with the Director, Office of Land Management, as bid security, a certified check, cashier's check, or money order made payable to "Commissioner of Transportation" in the amount of \$\_\_\_\_\_. All bid securities except the bid security of the highest responsible bidder (the successful bidder) will be returned immediately following the auction. The bid deposit of the successful bidder will be applied to the purchase price.

Failure on the part of the successful bidder to pay the full sale price within 45 calendar days after the date of the auction shall be considered proof that the successful bidder has elected to abandon the purchase and forfeit the bid security, not as a penalty, but in liquidation of damages sustained by the State of Minnesota as a result of such failure.

Balance of payment must be by certified check, cashier's check, or money order made payable to "Commissioner of Transportation". Conveyance will be made by Commissioner's Quitclaim Deed (approximately one month following final payment).

EXH - 303
MEMORANDUM OF SALE

High Bidder \_\_\_\_\_
name

\_\_\_\_\_
address

\_\_\_\_\_
Signature(s)

\_\_\_\_\_
date

SALE PRICE \_\_\_\_\_

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_
Property Management Specialist

Date \_\_\_\_\_

**PROPERTY MANAGEMENT (5-491.500)**  
**DEMOLITION OF BUILDINGS (5-491.504)**

**504.1 INTRODUCTION**

When Mn/DOT buys land for a highway project, often the land contains buildings or other structures. These structures must be cleared off the new right of way land, either before the prime contract for construction is let or as a part of the prime contract work.

Prior to a prime contract letting, buildings and other structures on the new right of way may be removed by one of the following methods:

Houses (and other structures) are sold by sealed bids. As part of the sale contract, the buyer must move the house off the R/W by a specified date. This process is discussed in R/W Manual 5-491.501.

Occasionally miscellaneous structures and equipment are transferred to a District Maintenance Office, the removal work being done by the District. This process is discussed briefly in R/W Manual 5-491.505.

Demolition contract letting prior to the prime contract letting. Buildings which are to be demolished have either been found to be not suitable for sale or have already been offered for public bids and remain unsold.

(For convenience, the term "building" will be used to denote a commercial building, or a house, garage, shed, etc., or any type of structure or fixture which is one the land and which must be cleared from the land to make way for the highway project work.)

**504.2 BUILDING RECORDS**

Property Management Personnel will keep an inventory of all buildings which have been purchased by the state as part of new right of way. This is done for each highway project. As these buildings are cleared off the R/W (by sale, transfer, or demolition contract) the Property Management Personnel will keep the building inventory records current for later reference when preparing for the prime contract letting (see below).

**504.3 LIST OF BUILDINGS TO BE DEMOLISHED**

For a Preliminary Demolition Contract:

From time to time, the Property Management Personnel, acting on the request of the District R/W Engineer/Manager and as directed by the Property Management Supervisor, will prepare a list of buildings to be demolished by separate contract prior to the highway project letting. This is usually done when the letting for the highway project is yet a year or more away, but the District R/W Office, for safety and neighborhood appearance, wants the unoccupied buildings removed. It has also been a common practice, after several houses have been sold by public bids and the houses have subsequently been moved, that a clean-up type of demolition contract be let in order to clear away remaining driveways, sidewalks, garages, fences, etc. Foundations will also be included in the demolition contract if recommended by the District R/W Office. (At this stage all basements of sold/removed houses should have been filled.) Otherwise house foundations will be left for removal under the prime contract. All items listed for removal are located within the limits of the same state project.

For the Prime Contract:

Based on the letting dates for the various construction projects (as printed in the "Tentative Schedule of Lettings") and mindful of the required lead time for submitting R/W related work, Property Management Personnel will list the buildings which must be demolished as part of the prime construction contract. (See also 5-491.507, Building Removal Status Report.)

#### **504.4 BUILDING DEMOLITION REQUEST MEMO**

Property Management Personnel will prepare an office memorandum which lists the various items to be demolished and corresponding location of each. The memo will be from the Property Management Supervisor to the Special Provisions Engineer. It has been customary for the Property Management Personnel to include an estimate of the cost for each item of work listed, based on past demolition bids. Estimated demolition costs should be based on the low bid unit costs derived from past demolition contract bids for similar type buildings. Property Management Personnel will send copies of the demolition request memo to all appropriate personnel (including environmental services if removal of underground storage tanks or involves significant environmental concerns). Concurrently with this procedure plans are being prepared by the District.

#### **504.5 PROCEDURE FOR PREPARING DEMOLITION MEMO**

Districts with assistance from Property Management will inspect all buildings. Take measurements of buildings, slabs, sidewalks and any other item to be demolished. Compute quantities. Consider if seeding and turf establishment is needed. Estimate demolition costs. Use the same pay items as listed in the Standard Specifications for Construction. Discuss any unusual aspects of the work with District R/W Engineer/Manager or the Unit Supervisor for making recommendations for any special provisions which may be needed. Special attention must be given to party walls and demolition work close to property lines. In many cases, foundations along property lines will be left in place for later removal during the prime contract work. In all cases, the Property Management Supervisor must be informed of demolitions to verify that none of the buildings have been put up for sale with removal by others pending.

#### **504.6 SEALING WATER WELLS**

It is standard practice for Mn/DOT to seal all wells on newly-acquired right of way land. When salvage appraisals are prepared, those properties having wells must be identified and the Office of Land Management Legal Unit notified. Mn/DOT Standard Specifications require that the work be done by a licensed water well contractor and that the work conform to the "Water Well Construction Code" of the Minnesota Department of Health. Minnesota Rules, Chapter 4725 (The Water Well Construction Code), requires the Water Well Contractor to send the "Abandoned Well Record" for each sealed well to the Minnesota Department of Health within 30 days of completion of sealing. Laws provide that the state may not sell real property without identifying the location of all wells on the property and in addition disclosing if the well is sealed. (See Minn. Stat. § 103I.311.) Whenever a demolition contract or prime contract includes sealing wells, Property Management Personnel should attempt to secure copies of the "Abandoned Well Record" for each sealed well. For this Property Management Personnel should contact the project engineer for the job. These copies should be placed in each of the various R/W parcel files covering the land parcels affected. Such copies in the parcel file will aid the Reconveyance Unit if the land is ever sold. (See R/W Manual 5-491.801.6.) The R/W Legal Unit should also be given copies.

**504.7 ASBESTOS**

For preliminary demolition contracts, Property Management building records will show that every building has been inspected for asbestos-containing material (see 5-491.105, Building Survey). For prime contracts: either a line-item will be included for asbestos evaluation; or, if available, Property Management will assist in securing evaluations. The Building Removal Status Report (see 5-491.507) must indicate for each building to be demolished whether or not asbestos is present. The Property Management Supervisor will determine need for using a consultant for investigation and testing and will coordinate asbestos investigation with District Office. (Each District Office should have at least one person on staff who has been trained to identify and take samples of possible ACM.) In some cases the Property Management Supervisor will have ACM removed by abatement consultant before demolition. The Property Management Supervisor will advise the Special Provisions Engineer by memo as to the existence, or apparent absence, of asbestos for each building to be demolished. If asbestos is present, the memo will include information on location and quantities. Purpose is to give contractors asbestos information *before* bidding. It should be noted that current regulations of the Minnesota Pollution Control Agency and the U.S. Environmental Protection Agency require written notice of intent to demolish, even if there is no apparent asbestos in the building, and such notice must be given for *each* building to be demolished. Mn/DOT Special provisions require the demolition contractor to give such notice to MPCA and U.S. EPA.

**PROPERTY MANAGEMENT (5-491.500)**  
**TRANSFER OF SURPLUS PROPERTY (5-491.505)**

**505.1 AUTHORITY**

Minnesota Statutes § 161.41 authorizes the commissioner of transportation to transfer surplus property (excluding real estate) to any agency or political subdivision of the state or to the U.S. government upon receipt of payment of the determined value of the property.

**505.2 TRANSFER OF SURPLUS PROPERTY TO DISTRICT MAINTENANCE OFFICE**

Surplus property may be transferred to the District Maintenance Office upon the request of the Area Maintenance Engineer or the District Right of Way Engineer. The request shall be in writing and directed to the Property Management Supervisor. The request shall identify the specific item or items of surplus property being asked for and the parcel or parcels involved.

The Property Management Supervisor who will assign the transfer to the Building Removal Technician. The Building Removal Technician will verify that the surplus property is available to be transferred, will determine the salvage value of the property, will set a removal deadline date based upon the highway construction letting schedule, and will draft a reply memorandum for signature by the Property Management Supervisor concurring with the transfer.

The reply memorandum will identify the specific property and will notify the Area Maintenance Engineer (with a copy to District Right of Way Engineer) that a copy of the transfer memorandum is being sent to the Office of Financial Management, Right of Way Accounting, for charging the District Maintenance Office for the salvage value of the property (if a salvage value is determined) and for crediting federal funds, if the property was acquired with federal funds.

A similar procedure may be used for transferring surplus property to any other office of the Department of Transportation.

**505.3 TRANSFER OF BUILDINGS OR SURPLUS PROPERTY TO ANOTHER STATE AGENCY OR POLITICAL SUBDIVISION OR TO THE U.S. GOVERNMENT**

The appropriate representative of the state agency, political subdivision, or the U.S. government writes to the Director, Office of Land Management, requesting surplus property in either general terms or identifying specific items (usually after discussing the specific items with the District Right of Way Engineer).

The Building Removal Technician verifies that the District Maintenance Engineer does not want the property for the District Maintenance Office. The Building Removal Technician determines the salvage value of the property and the time period which can be allowed for removal of the surplus property from the highway right of way.

The Building Removal Technician drafts a reply letter to the representative of the requesting agency, etc., and forwards to Property Management Supervisor for review and then to the Director for signature. This letter will identify the specific items of property being transferred, and will set out the removal deadline date and the salvage value which must be paid before removing the property.

A copy of the transfer letter will be sent to the District Right of Way Engineer. A copy will also be sent to the Office of Financial Management, Right of Way Accounting to initiate billing the agency, etc., and subsequent crediting of federal funds, if the property was acquired with federal funds.

**CHAPTER 506 IS INTENTIONALLY LEFT VACANT**

**PROPERTY MANAGEMENT (5-491.500)**  
**BUILDING REMOVAL STATUS REPORT (5-491.507)**

**507.1 PURPOSE**

The Building Removal Status Report is a report prepared by the Property Management Personnel to advise on the status towards removal of each building or other structure which was on the right of way at the time of purchase.

The Report is sent to the following persons:

Right of Way Certificates Technician, Office of Land Management.

Special Provisions Engineer, Design Services.

Cost Data and Estimating Engineer, Design Services.

The Report must be prepared far enough in advance of each scheduled highway contract letting to allow enough working time for the building removal requirements to be included in the plans and special provisions of the specifications.

The Report is prepared for each project coming up for letting which has a building or related items on it. Related items would include such things as water wells, septic tanks, underground storage tanks, or any other miscellaneous structure to be removed from the right of way.

**507.2 PROCEDURE**

A. Property Management Personnel gets data for preparing the Report from the following sources:

1. A monthly review of the Property Management inventory file to determine which buildings are on the project (and vacant), other structures on the project to be removed, salvage value, whether an upcoming sale by bids has been scheduled, whether a building is still being rented out, and any other information which might be relevant to scheduling removal of the building or other structure.
2. A monthly review of construction plans for upcoming lettings. This is done in conjunction with the Office of Land Management Certificates Unit. Construction plan sheets are reviewed.
3. A monthly review of the Tentative Schedule of Lettings furnished by the Office of Technical Support, Engineering Special Provisions Unit.

The Building Removal Status Report may be initiated by the building removal technician. Many times it is also initiated by a memorandum from the District Office requesting that certain buildings be included in the prime contract or in a preliminary demolition contract (see also 5-491.504, Demolition of Buildings).

B. Property Management Personnel prepares the Building Removal Status Report approximately nine to twelve weeks before the letting date. (The Report is sometimes titled "Building Status and Disposition.")

- C. Property Management Personnel determines which buildings, advertising signs, water wells, underground tanks, concrete foundations and slabs will be affected by each construction project, through examination of construction plan, right of way work map and kardex or other inventory file.
- D. Property Management Personnel prepares building status report for each project on which there are buildings and related structures and determines and lists the following data:
- Parcel number, former owner's name, location of each building or other structure by street address or highway engineering survey station, physical description of the building or structures, current or anticipated status of building occupancy, the cubic feet or square feet for unit costs, and estimated removal costs.
- E. The method to be used in removing each building or structure from the right of way is designated in the report, for example:
- Demolition by demolition contractor; demolition by prime contractor, removal by district maintenance unit, public sale for removal by purchaser (give date for removal); retention and removal by owner (give date for removal).
- F. Property Management Personnel prepares transmittal memo from Director of Office of Land Management to Special Provisions Engineer, attaches Building Status and Disposition Report and distributes copies of the above information to:
- District Right of Way Engineer/Manager, Utilities Engineer, Review and Design Liaison Engineer, Cost Data Engineer, Right of Way Project Manager, Right of Way Certificates Technician, and Property Management Supervisor.

**PROPERTY MANAGEMENT (5-491.500)**  
**SALVAGE APPRAISALS (5-491.508)**

**508.1 SALVAGE VALUE OF BUILDINGS**

The salvage value of a building is an estimate of the amount of money that Mn/DOT might reasonably expect to receive from the public sale of that building by auction or sealed bids (with the purchaser having to pay all costs for removing the building from the right of way). An exception to the above general definition for the salvage value of a building involves the salvage value of owner-retained trade fixtures unique to the owner's business and for which there would be little or no market demand and thus little or no chance of selling at public sale by auction or sealed bids. This is discussed below in 508.4.

The Real Estate Representative will perform the following tasks as directed by the Property Management Supervisor:

- ! Prepare a salvage value appraisal for each building on land being acquired by Mn/DOT.
- ! Receive from Right of Way Project Management the following: building photographs, Building Analysis Sheet (Form 2548), and Floor Plan Building Sketch (Form 2527).
- ! Determine the nature and condition of the subject building using the above photographs and forms. The Property Management Supervisor may also require the Real Estate Representative to personally inspect the condition of any building to be acquired.
- ! Compare the subject building with similar buildings sold by Mn/DOT by public sale. Use comparable sales file (see 508.2).
- ! Estimate the anticipated selling price of the subject building (the salvage value). Also estimate the probable wrecking cost.
- ! Record this salvage value amount and estimated wrecking cost on the Salvage Appraisal (Form 25001) and forward it to Office of Land Management Project Coordination. File the photographs and forms previously received.
- ! Retain a copy of the Salvage Appraisal (with a notation of the reference comparable sale H-numbers used). Record the salvage value for the subject building in the building inventory kardex or other inventory system.

Although the term "building" is used herein, it should be recognized that in almost all cases the building will be a house, garage, or small residential or farm outbuilding, that is, structures that can be moved economically. Some buildings will clearly have no salvage value (zero salvage value), and there will be no comparable sales for these types of buildings. Examples include large buildings which clearly must be demolished to remove from the right of way, most masonry or masonry block buildings, and houses in a very dilapidated condition.

Salvage values may be rounded to the extent required by the Property Management Supervisor. For example, the salvage value of a certain house might be estimated as \$18,000. Listing the salvage value as \$18,320 would imply an accuracy that is not present in the comparable sales method of estimating. (The average spread between high bid and second high bid on a typical house is over \$1000.)

## 508.2 COMPARABLE SALES FILE

The Real Estate Representative will keep a reference file or looseleaf binder of representative building sales. Besides listing the S.P. number, parcel number, and address, the file should show a photo (or photos) of the building, notation of pertinent construction details, sale "H" number, sale date, sale amount (the high bid), and any other comments which would aid one in making a comparison of value.

## 508.3 USE OF SALVAGE VALUES

The salvage value of a building will be referred to in the following circumstances.

- ! If an owner elects to retain a building, the Direct Purchase Unit will reduce the purchase price offer by the amount of the salvage value of the building. Also, the Direct Purchase Unit will usually require a building removal performance bond in an amount at least equal to the estimated wrecking cost.
- ! If the letting date is but a few months away, the amount of the salvage value (adjusted to reflect a short removal time) can be helpful in deciding whether to try to sell the building or to leave it on the right of way to be demolished (or salvaged) by the state's highway contractor.
- ! If a building is transferred to District Maintenance Operations, the salvage value is used for interoffice billing. See 5-491.505, Transfer of Surplus Property, section 505.2.
- ! If the salvage value is over \$15,000, sealed bids "must be solicited by public notice inserted at least once in a newspaper or trade journal not less than seven days before the final date of submitting bids." See Minn. Stat. § 161.41.

Since Property Management practice has been to routinely advertise *all* of its public sales of buildings, regardless of whether the salvage value is under \$15,000, the above statutory distinction is of no practical importance. It is mentioned here because it *is* a statutory distinction for the sales procedure, and Property Management personnel should be aware of it.

- ! If, upon review after bids have been opened, the high bid is considerably less than the salvage value, the Property Management Supervisor, may require that all bids be rejected and the building readvertised for sale.

## 508.4 SALVAGE VALUE OF CERTAIN FIXTURES

From time to time the Real Estate Representative will be called on to determine the salvage value of certain types of fixtures for which there will be no comparable past sales in the Property Management comparable sales file. The situation might arise, for example, if the value of the item is clearly high enough to justify the expense of advertising and holding a public bid opening. The lack of comparable sales in this situation, however, presents no particular problem if there is sufficient competition in the auction or sealed bid process; such competition will effectively establish the value of the item.

A more troublesome situation arises when a salvage value estimate must be made for a fixture to be retained by the owner and no comparable sales are available. The following example will illustrate the problem.

Example: Mn/DOT needs a narrow strip of land for a road widening project. Mn/DOT will acquire a large custom-built advertising sign as part of the purchase of a strip of land in front of a business enterprise. The sign is unique to the particular business and would have little or no value to anyone else. Before the purchase is completed, the owner inquires into the possibility of retaining the sign and how much it would cost to keep it. The owner contemplates moving the sign off the narrow strip of new right of way and setting it up again on the owner's remaining land, immediately adjacent to where it now stands.

This example illustrates a salvage appraisal problem in that, even though the state may have paid a considerable price for the sign or some other fixture, it would have little resale value at public sale. A reasonable salvage value should nonetheless be established. The following approach is suggested. The Real Estate Representative should discuss the problem with the Property Management Supervisor and with the appraiser for the state who appraised the in-place value of the fixture. The state's appraiser may have knowledge of sales of similar fixtures, and will likely have information on the condition and market demand for the fixture. The appraiser might also have knowledge of the value of the non-removable parts of the total assembly, i.e., foundations and underground wiring. A relocation advisor or an equipment appraiser might be able to provide information on the cost to remove the fixture.

These same general procedures will apply toward a salvage estimate of other items such as trees, landscaping and light fixtures.

**PROPERTY MANAGEMENT (5-491.500)**  
**LEASING FIELD OFFICES AND STORAGE SITES (5-491.509)**

**509.1 AUTHORITY**

Minnesota Statutes, Section 161.20, GENERAL POWERS OF THE COMMISSIONER, Subd. 2, authorizes the Commissioner of Transportation to ". . . rent. . . grounds, and buildings necessary for the storing and housing of material, machinery, tools, and supplies or necessary for office space for employees to maintain, repair, or remodel such buildings as may be necessary;"

**509.2 DEPARTMENT OF ADMINISTRATION**

Although the Commissioner of Transportation has the general authority to lease field offices and storage sites (as described in § 509.1, above) the actual leasing and administration of the lease is done by the Commissioner of Administration, acting under Minn. Stat. Section 16B.24, Subd. 6. The statute reads in part as follows:

**COMMISSIONER OF ADMINISTRATION, MANAGEMENT OF STATE PROPERTY****16B.24 GENERAL AUTHORITY**

*Subdivision 6. Property leases. (a) Leases. The commissioner shall lease land and other premises when necessary for state purposes. Notwithstanding subdivision 6a, paragraph (a), the commissioner may lease land or premises for up to ten years, subject to cancellation upon 30 days' written notice by the state for any reason except lease of other non-state-owned land or premises for the same use. The commissioner may not lease non-state-owned land and buildings or substantial portions of land or buildings within the capitol area as defined in section 15.50 unless the commissioner first consults with the capitol area architectural and planning board. If the commissioner enters into a lease-purchase agreement for buildings or substantial portions of buildings within the capitol area, the commissioner shall require that any new construction of non-state-owned buildings conform to design guidelines of the capitol area architectural and planning board. Lands needed by the department of transportation for storage of vehicles or road materials may be leased for five years or less, such leases for terms over two years being subject to cancellation upon 30 days' written notice by the state for any reason except lease of other non-state-owned land or premises for the same use. An agency or department head must consult with the chairs of the house appropriations and senate finance committees before entering into any agreement that would cause an agency's rental costs to increase by ten percent or more per square foot or would increase the number of square feet of office space rented by the agency by 25 percent or more in any fiscal year.*

*(b) Use vacant public space. No agency may initiate or renew a lease for space for its own use in a private building unless the commissioner has thoroughly investigated presently vacant space in public buildings, such as closed school buildings, and found that none is available or use of the space is not feasible, prudent, and cost-effective compared with available alternatives.*

*(c) Preference for certain buildings. For needs beyond those which can be accommodated in state-owned buildings, the commissioner shall acquire and utilize space in suitable buildings of historical, architectural, or cultural significance for the purposes of this subdivision unless use of that space is not feasible, prudent and cost-effective compared with available alternatives. Buildings are of historical, architectural, or cultural significance if they are listed on the national register of historic places, designated by a state or county historical society, or designated by a municipal preservation commission.*

*(d) Recycling space. Leases for space of 30 days or more for 5,000 square feet or more must require that space be provided for recyclable materials.*

*Subdivision 6a. Lease-purchase agreement; cancellation. (a) With the approval of the commissioner of finance and the recommendation of the legislative advisory commission, the commissioner of administration may enter into lease-purchase agreements. A lease-purchase agreement must provide the state with a unilateral right to purchase the leased premises at specified times for specified amounts. Under these lease agreements, the lease rental rates shall not be more than market rental rates. Notwithstanding subdivision 6, the term of the lease may be for more than ten years, but must not exceed 20 years. Prior to exercising the state's right to purchase the premises, the purchase must be approved by an act of the legislature.*

*(e) A lease-purchase agreement entered into under paragraph (a) must be subject to cancellation by the state for any reason except lease of other non-state-owned land or premises for the same use.*

In the recent past, the state has entered into leases for various highway purposes, such as:

Resident Engineer office.

Project Engineer field office.

Truck and snowplow storage.

Heated indoor storage for equipment.

Space on radio tower for mounting antenna.

Rooftop space for mounting traffic monitoring equipment.

Site for installing weather station transmitter.

The above list is not intended to be restrictive, but rather to give an example of the wide range of leases which have been entered into for Mn/DOT operations.

All of the above types of leases are prepared by the Real Estate Management Division of the Department of Administration.

The procedure to be followed by the Mn/DOT District Office in initiating a lease, and the procedures subsequently followed by the Department of Administration (REM), by the Department of Finance (Encumbrance Control)

The Department of Administration, Real Estate Management, will guide District employees in the steps for initiating a lease and the oversight role of REM in the initial stages of entering into a lease. To discuss various aspects of initiating a lease, contact:

Leasing Supervisor  
Real Estate Management  
Department of Administration

See Section 5-491.510 of the R/W Manual for the procedure to be used in leasing land for stockpiling gravel. The stockpile site leasing procedure departs somewhat from the above general procedure set out in the Department of Finance Directive No. 06:04:09 in that Mn/DOT uses the standard Mn/DOT Stockpile Lease Form rather than a Department of Administration form; also the lease is negotiated by Mn/DOT District Office personnel instead of Administration personnel. (Dept. of Admin., Real Estate Management approves of this departure.)

The District Office employee should send the Requisition for Purchase form directly to the Mn/DOT Budget Management Office and Property Management Supervisor. An office memorandum should accompany the Requisition for Purchase setting out background information needed by the Department of Administration REM for preparing the lease. This information should include name of owner(s), address, telephone number, description of area to be leased, floor plans, terms, rent, utilities or services furnished, etc. Also include the name and telephone number of the District Office contact person and Property Management contact person.

Funds should be encumbered from District Office budgets.

Mn/DOT Budget Management will indicate approval of funds and forward to Department of Administration REM.

**PROPERTY MANAGEMENT (5-491.500)****RENTAL OF PROPERTY FOR STOCKPILING EQUIPMENT,  
GRAVEL AND OTHER ROAD MATERIAL (5-491.510)****510.1 BACKGROUND**

The District Engineer's staff will determine the need for equipment and materials storage sites on land owned by others, ascertain site ownership and negotiate the conditions of the lease with the owner.

The lease is written on Mn/DOT standard lease form Mn/DOT TP-25121-04 (11-97) titled EXCLUSIVE STOCKPILE SITE LEASE. The terms of the lease commonly negotiated with the landowner are: the time period, rental rate, renewal options, the area to be covered by the lease and any special restrictions that the landowner may require.

**510.2 POLICY**

Minnesota Statutes, Section 161.20, GENERAL POWERS OF COMMISSIONER, Subd. 2, authorizes the Commissioner of Transportation to purchase. . . all road material, machinery, tools and supplies necessary for the construction, maintenance, and improvement of the trunk highway system and to "rent ... ground and buildings necessary for the storing and housing of such material, machinery, tools and supplies ..."

**510.3 PROCEDURE**

<b>RESPONSIBILITY</b>	<b>ACTION</b>
<b>District Office</b>	<ol style="list-style-type: none"> <li>1. Determine need for a leased stockpile site.</li> <li>2. Negotiate the lease with the landowner.</li> <li>3. Prepare an original and one copy of the stockpile lease form.</li> <li>4. Secure the landowner's signature and complete the acknowledgment section on both copies of the lease.</li> <li>5. Have owner complete IRS Form W-9 which is required to effect the rental payment.</li> <li>6. Send both copies of the lease and one copy of the W-9 to Office of Land Management, Property Management Unit for processing.</li> </ol>
<b>Property Management</b>	<ol style="list-style-type: none"> <li>1. Review lease form and Form W-9 for completeness and accuracy of information. Resolve any problems with District Office contact person.</li> <li>2. Assign a number to the lease and enter it into the records for future renewal notice to the District.</li> </ol>

3. Send both copies of the lease to the following for acceptance and approval signatures:
  - " Director, Office of Land Management
  - " Attorney General's Office for form and execution
4. Upon completion of the signature sequence, make the required rental payment to the landowner, send a copy of the lease to the District, a copy to the landowner and retain the original in the Property Management file.
5. Provide written notice to the District 60 days prior to the lease expiration date or send option renewal letter to the landowner and make the required rental payment to the landowner for the renewal period.

#### **510.4 RECORDING THE LEASE**

Completed as written, the lease is a recordable document; however, the District R/W Engineer may decide not to record leases for stockpile sites of minor importance or where there is sufficient "actual notice" at the site to show the State's interest.

#### **510.5 MISCELLANEOUS CONSIDERATIONS**

##### **A. STOCKPILE SITE ON DNR LAND**

Stockpile sites on DNR land are leased from the appropriate DNR field unit. DNR will write the agreement on its own form. DNR agreements are signed by both Mn/DOT and DNR, and processed by DNR.

##### **B. WHEN OWNER IS PUBLIC ENTITY**

A certified copy of the enabling resolution by the governing body must be attached to leases on sites owned by a county, township or city.

##### **C. MN/DOT OPERATIONS AT SITE**

The site should not be used by Mn/DOT until the District Office has received a fully-executed copy of the lease.

**SPECIAL PROCEDURES (5-491.800)**

- 5-491.801 RECONVEYANCE
  - .801.1 Introduction
  - .801.2 Policy/Authorities
  - .801.3 FHWA Involvement
  - .801.4 Appraised Value of the Land
  - .801.5 Change in Access Control
  - .801.6 Disclosure of Wells
  - .801.7 Marginal Land and Wetlands
  - .801.8 Reconveyance Procedure
  - .801.9 FHWA Approvals
  - .801.10 Relocation of Controlled Access Opening
  - .801.11 Reconveyance Related Topics
  
- 5-491.802 MATERIAL PIT LEASES
  - .802.1 Background
  - .802.2 Authority
  - .802.3 The Road Construction Manual (Materials Policy & Procedure)
  - .802.4 Procedure
  - .802.5 Procedure for Initiating Lease
  - .802.6 Procedures for Making the Pit Available to the Contractor
  - .802.7 Procedures for Paying the Pit Owner
  - .802.8 Procedures for Billing the Contractor
  - .802.9 Relinquishment of a Gravel Pit
  - .802.10 Miscellaneous Topics and Lease Forms
  
- 5-491.803 CEMETERY LANDS
  - .803.1 Policy
  - .803.2 Procedure
  
- 5-491.804 COUNTY AND JOINT COUNTY (Judicial) DITCH DRAINAGE SYSTEMS
  - .804.1 Policy
  - .804.2 Procedures for Actions Initiated by Parties Outside Mn/DOT
  - .804.3 Procedures for Action Initiated by Mn/DOT
  
- 5-498.805 PERMITS AFFECTING PUBLIC WATERS
  - .805.1 Policy
  - .805.2 Procedures
  
- 5-491.806 TRANSFER OF CUSTODIAL CONTROL BETWEEN STATE DEPARTMENTS
  - .806.1 Policy
  - .806.2 Procedure
  
- 5-491.807 PROCEDURES FOR ACQUIRING RIGHT OF WAY FROM LOCAL GOVERNMENT AGENCIES
  - .807.1 Policy; Acquisition, Local Government Agencies

- 5-491.808 LAND OR INTEREST IN LANDS OWNED BY THE UNITED STATES OF AMERICA
  - .808.1 Authority and Purpose
  - .808.2 Application for Transfer of Federal Lands
  - .808.3 Bureau of Indian Affairs - Apply Directly to the Agency
  - .808.4 U.S. Military Departments - Apply Directly to the Agency
  - .808.5 Veterans Administration - Apply Directly to Agency
  - .808.6 Recording
  - .808.7 Land Transfers Requested by Counties
  
- 5-491.809 DONATIONS OF REAL PROPERTY FOR RIGHT OF WAY
  - .809.1 Appraisal of Donations
  - .809.2 Qualified Appraiser Exclusions
  
- 5-491.810 LIMITED USE PERMITS
  - .810.1 Policy
  - .810.2 FHWA Involvement
  - .810.3 Procedure
  
- 5-491.811 LICENSED REAL ESTATE BROKER
  - .811.1 Policy
  - .811.2 Procedures
  
- 5-491.812 LAND EXCHANGES
  - 812.1 Policy
  - 812.2 Procedure
  
- 5-491.813 MN/DOT OWNERSHIP OF OCCUPIED T.H. RIGHT OF WAY
  - .813.1 Policy
  - .813.2 Procedure
  
- 5-491.814 CONVEYANCE OF RAIL BANK PROPERTY
  - 814.1 Policy
  - 814.2 Procedure

**SPECIAL PROCEDURES (5-491.800)**  
**RECONVEYANCE (5-491.801)**

### 801.1 INTRODUCTION

This chapter sets out the procedures to be followed for conveying title to land which the state no longer needs for trunk highway purposes. These procedures are prescribed in, Minn. Stat. §161.43 and §161.44, these two statutes are presented in full in Section 801.2 below.

These relinquishments and conveyances of title are commonly referred to by Right of Way personnel as "reconveyances." The terms "conveyance" and "reconveyance" will therefore be used interchangeably in this chapter.

Many of the preliminary procedural steps for processing a conveyance of excess land are the same as would be used in processing the conveyance of right of way fee land under Minn. Stat. §161.44. However, where the procedure for conveying excess land departs from the general procedure, the departure and the substitute procedure will be noted. For easy reference, Minn. Stat. §161.23 is set forth (in part) in Section 801.2 below.

Reconveyance documents include language to protect utility interests on the right of way by permit or existing easement unless specified otherwise.

### 801.2 POLICY/AUTHORITIES

#### MINN. STAT. §161.23 EXCESS ACQUISITION

*Subdivision 1. Acquisition of entire tract. On determining that it is necessary to acquire any interest in a part of a tract or parcel of real estate for trunk highways purposes, the commissioner of transportation may acquire in fee, with the written consent of the owner or owners thereof, by purchase, gift, or condemnation the whole or such additional parts of such tract or parcel as the commissioner deems to be in the best interests of the state. Any owner or owners consenting to such excess acquisition may withdraw the consent at any time prior to the award of commissioners in the case of condemnation proceedings, or at any time prior to payment in the case of purchase. In the event of withdrawal the commissioner shall dismiss from the condemnation proceedings the portion of the tract in excess of what is needed for highway purposes.*

*Subd. 2. Conveyance of excess. On acquiring real estate in excess of what is needed for trunk highway purposes as authorized in subdivision 1, the commissioner of transportation shall, within one year after the completion of the construction, reconstruction, or improvement of the highway for which a portion of the real estate was needed and required, convey and quitclaim the excess real estate to the highest responsible bidder, after receipt of sealed bids following mailed notice to adjacent landowners and published notice of the sale for three successive weeks in a newspaper or trade journal of general circulation in the territory from which bids are likely to be received. All bids may be rejected and new bids received upon like advertisement. The deed may contain restrictive clauses limiting the use of such real estate in the interests of safety and convenient public travel when the commissioner finds that the restrictions are reasonably necessary.*

*Subd. 2a. Services of a licensed real estate broker. If the lands remain unsold after being offered for sale to the highest bidder, the commissioner may retain the services of a licensed real estate broker to find a buyer. The sale price may be negotiated by the broker, but must not be less than 90 percent of the appraised market value as determined by the commissioner. The broker's fee must be established by prior agreement between the commissioner and the broker, and must not exceed ten percent of the sale price for sales of \$10,000 or more. The broker's fee must be paid to the broker from the proceeds of the sale.*

*Subd. 5. Receipts paid into trunk highway money fund. Money received from the sale of such lands and properties less any fee paid under subdivision 2a must be paid into the trunk highway fund.*

#### **MINN. STAT. §161.43 RELINQUISHMENT OF HIGHWAY EASEMENTS**

*The commissioner of transportation may relinquish and quitclaim to the fee owner an easement or portion of an easement owned but no longer needed by the transportation department for trunk highway purposes, upon payment to the transportation department of an amount of money equal to the appraised current market value of the easement. If the fee owner refuses to pay the required amount, or if after diligent search the fee owner cannot be found, the commissioner may convey the easement to an agency or to a political subdivision of the state upon terms and conditions agreed upon, or the commissioner may acquire the fee title to the land underlying the easement in the manner provided in Section 161.20, subdivision 2. After acquisition of the fee title, the lands may be sold to the highest responsible bidder upon three weeks published notice of the sale in a newspaper or other periodical of general circulation in the county where the land is located. All bids may be rejected and new bids received upon like publication. If the lands remain unsold after being offered for sale to the highest bidder, the commissioner may retain the services of a licensed real estate broker to find a buyer. The sale price may be negotiated by the broker, but must not be less than 90 percent of the appraised market value as determined by the commissioner. The broker's fee must be established by prior agreement between the commissioner and the broker, and must not exceed ten percent of the sale price for sales of \$10,000 or more. The broker's fee must be paid to the broker from proceeds of the sale.*

#### **MINN. STAT. §161.44 RELINQUISHMENT OF LANDS OWNED IN FEE**

*Subdivision 1. Conveyance. The commissioner, may convey and quitclaim any lands, including any improvements thereon, owned in fee by the state for trunk highway purposes but no longer needed therefor. Notwithstanding any provisions in this section or in section 161.23 to the contrary, fee title to or an easement in all or part of the lands and lands previously acquired in fee for trunk highways or acquired pursuant to Section 161.23, in excess of what is needed for highway purposes may be conveyed and quitclaimed for public purposes to any political subdivision or agency of the state upon the terms and conditions as may be agreed upon between the commissioner and the political subdivision or agency.*

*Subd. 2 Reconveyance when remainder of tract owned by vendor or surviving spouse. If the lands were part of larger tract and the remainder of the tract is still owned by the person or the person's surviving spouse from whom the lands were acquired, or if the lands constituted an entire tract, the lands must first be offered for reconveyance to the previous owner or the owner's surviving spouse. When lands are offered for reconveyance, the amount of money to be repaid for those lands must be the appraised current market value of the lands to be reconveyed. The offer must be made by certified mail addressed to the person at the person's last known address. The person or the person's surviving spouse shall have 60 days from the date of mailing the offer to accept and to tender to the commissioner the required sum of money.*

*Subd. 3. Conveyance when remainder of tract no longer owned by vendor or surviving spouse. If the lands were part of a larger tract and the remainder of the tract is no longer owned by the person or the person's surviving spouse from whom the lands were acquired, the lands shall be offered for conveyance to the person owning the remaining tract in the same manner and on the same terms as provided in subdivision 2.*

*Subd. 4. **Conveyance when remainder of tract has been divided into smaller tracts.** If the lands were part of a larger tract and if the tract has been platted or divided into smaller tracts and sold, the commissioner may offer the lands to the owners of the smaller tracts or lots abutting upon the lands in the same manner and on the same terms as provided in subdivision 2, or the commissioner may proceed to sell the lands to the highest responsible bidder as provided in subdivisions 5 and 6.*

*Subd. 5. **Conveyance to highest bidder in certain cases.** If the larger tract has been platted into lots or divided into smaller tracts and the commissioner elects to proceed under this subdivision, or if the lands constituted an entire tract and the person from whom the lands were acquired and the person's spouse are deceased, or if the offers as provided for are not accepted and the amount of money not tendered within the time prescribed, the lands may be sold and conveyed to the highest responsible bidder upon three weeks published notice of such sale in a newspaper or other periodical of general circulation in the general area where the lands are located. All bids may be rejected and new bids received upon like advertisement.*

*Subd.6. **Public auction.** In lieu of the advertisement for sale and conveyance to the highest responsible bidder, such lands may be offered for sale and sold at public auction to the highest responsible bidder. Such sale shall be made after publication of notice thereof in a newspaper of general circulation in the area where the property is located for at least two successive weeks and such other advertising as the commissioner may direct. If the sale is made at public auction a duly licensed auctioneer may be retained to conduct such sale, the auctioneer's fees for such service to be paid from the proceeds, and there is appropriated from such proceeds an amount sufficient to pay such fees.*

*Subd. 6a. **Services of a licensed real estate broker.** If the lands remain unsold after being offered for sale to the highest bidder, the commissioner may retain the services of a licensed real estate broker to find a buyer. The sale price may be negotiated by the broker, but must not be less than 90 percent of the appraised market value as determined by the commissioner. The broker's fee must be established by prior agreement between the commissioner and the broker, and must not exceed ten percent of the sale price for sales of \$10,000 or more. The broker's fee must be paid to the broker from the proceeds of the sale.*

*Subd. 7. **Gravel or borrow pits; amount of repayment.** In all cases as hereinbefore specified, if the lands to be reconveyed were acquired for gravel or borrow pit purposes and the commissioner has determined that all materials suitable or needed for trunk highway purposes have been removed from such pit, the amount to be repaid therefor need not be at least the amount paid for such pit by the state, but in no event shall the amount to be so repaid to the state therefor be less than the estimated market value thereof. In all other respects the procedures for the reconveyance of gravel or borrow pits shall be the same as the procedures for the reconveyance of other lands as provided in this section.*

*Subd. 8. **Restrictive clauses in deed.** The deed may contain restrictive clauses limiting the use of the lands or the estate conveyed when the commissioner determines that such restrictions are reasonably necessary in the interest of safety and convenient public travel.*

*Subd. 9. **Receipts paid into trunk highway fund.** Moneys received from the sale of such lands and properties less any fees paid under subdivision 6a, must be paid into the trunk highway fund.*

*Subd. 10. [Repealed, 1967 c 214 s 6]*

*Subd 11. **Airspace and subsurface areas.** Nothing contained in this section shall apply to the lease or other agreement for the use of air space above the subsurface area below the right-of-way of any trunk highway or the surface of any trunk highway right-of-way as provided in section 161.433, subdivision 1.*

### 801.3 FHWA INVOLVEMENT

#### ENVIRONMENTAL REQUIREMENTS

The National Environmental Policies Act (NEPA) requires that environmental consequences be evaluated wherever a Federal approval is required.

For reconveyances, temporary use permits, and access control changes, which have little or no impact on the environment, this was satisfied by the Programmatic Environmental Assessment (EA) prepared by Mn/DOT and the Finding of No Significant Impact (FONSI) issued by FHWA on May 18, 1984. "Little or no impact on the environment" means the proposed action will not affect an environmentally sensitive area, such as a wetland, floodplain, archeological or historical site, or critical habitat for rare or threatened and endangered species. By issuing the FONSI, the FHWA has determined, in advance, that these types of actions will not significantly impact the environment. For actions which do involve environmentally sensitive areas, and therefore do not fall under the above-mentioned EA and FONSI, an environmental analysis must be made of the proposed action by Mn/DOT and concurred in by FHWA.

#### RECONVEYANCE APPROVAL

The Transportation Equity Act for the 21<sup>st</sup> Century 1998 (TEA-21) allows FHWA approval actions to be delegated to Mn/DOT. Under this program, FHWA has delegated to Mn/DOT approval action for reconveyances on Federal-aid highways other than interstate highways on the National Highway System.

If the conveyance is for a valuable consideration and not money then the specific public purpose should be stated in the deed (i.e.: transit, park, other) and a reversion clause will be added to the deed providing the title revert to the State of Minnesota should it cease to be used for that purpose.

#### CORRESPONDENCE WITH FHWA

FHWA approval is needed for Mn/DOT action in the following categories:

- ! Reconveyances on interstate highways on the National Highway System.
- ! Reconveyances which do not fall within the 1984 FONSI (e.g., the proposed action is environmentally sensitive). An environmental analysis must be made by Mn/DOT, and FHWA concurrence in the environmental analysis is required. (For example, see 801.7 regarding proposed conveyance of wetlands.)
- ! Access changes on the interstate highways of the National Highway System, except field access changes in rural areas.

Approval requests submitted to FHWA must contain the following:

- ! Right of way maps showing the proposed transfer,
- ! Background information and copies of letters, etc., which would aid FHWA personnel in understanding the setting for the proposed conveyance, and,
- ! Advice that the proposed action falls under the 1984 FONSI, or if it does not, the environmental analysis prepared for the action must be included.

- ! A statement that Federal funds did (or did not) participate in the acquisition of the right of way.

#### 801.4 APPRAISED VALUE OF THE LAND

The Central Office Valuation Manager is responsible for coordinating reconveyance appraisals, and in deciding whether they should be made by staff or contract appraisers. Guidance for making reconveyance appraisals is contained in Section 5-491.202 of the Right of Way Manual.

When either the Valuation Manager or the District/Division Right of Way Engineer estimates that a reconveyance is valued under \$10,000, no formal appraisal is required. See Section 5-491.202.7 of the Right of Way Manual. These minimum damage reports will be prepared in the District/Division Office and approved by the District/Division Right of Way Engineer.

When an appraisal is required, the uncomplicated Acquisition Appraisal (5-401.202.4) shall be used.

The reimbursement to the State shall be in accordance with the provisions of Minnesota Statutes 161.43 and 161.44 unless there is an Act of the Legislature authorizing or directing a conveyance of specific highway land to a specific person or entity. In such cases, the special Act of the Legislature will also set out the consideration for the conveyance. The terms of such Act will prevail over any terms of the general laws, Minnesota Statute Section 161.43 and Minnesota Statute Section 161.44, which are not consistent with the Act.

#### 801.5 CHANGE IN ACCESS CONTROL

Occasionally an owner of land along a controlled access highway will request a change in the location of an existing access to the highway. This will mean closing the existing access and then opening an access at the new location along the right of way line. The granting of the new access is in fact a conveyance of an interest in land and the procedure will closely follow that set out in §801.8. However, before deeding the new access to the landowner, Mn/DOT will require the landowner to deed to Mn/DOT the present access, in effect closing that access location. The deed closing an access is an acquisition document.

Thus the procedure for a change of access location (sometimes called "an exchange of access") will involve a few additional steps. These are described in §801.10.

#### 801.6 DISCLOSURE OF WELLS

The 1989 Legislature passed several laws aimed at protecting groundwater supplies. Two sections of the new laws directly affect the Mn/DOT reconveyance procedure and have been repeated (in part) below.

##### CHAPTER 103I WELLS, BORINGS, AND UNDERGROUND USES

##### 103I.311 IDENTIFICATION AND SEALING OF WELLS ON STATE PROPERTY

*Subdivision 1. Identification of wells. The commissioner of natural resources in cooperation with other state agencies must identify the location and status of wells and abandoned wells located on state property.*

*Subd. 3. Prohibition on state land purchased without well identification. The state may not purchase or sell real property or an interest in real property without identifying the location of all wells on the property, whether in use, not in use, or sealed, and making provisions to have the wells not in use properly sealed at the cost of the seller as part of the contract. The deed or other instrument of conveyance evidencing the sale may not be recorded with the county recorder or registrar of titles unless this subdivision is complied with ....*

#### 1031.235 SALE OF PROPERTY WHERE WELLS ARE LOCATED

*Subdivision 1. Disclosure of wells to buyer. (a) Before signing an agreement to sell or transfer real property, the seller must disclose in writing to the buyer information about the status and location of all known wells on the property, by delivering to the buyer either a statement by the seller that the seller does not know of any wells on the property, or a disclosure statement indicating the legal description and county, and a map drawn from available information showing the location of each well to the extent practicable. In the disclosure statement, the seller must indicate, for each well, whether the well is in use, not in use, or sealed.*

*(b) At the time of closing of the sale, the disclosure statement information and the quartile, section, township, and range in which each well is located must be provided on a well certificate signed by the seller or a person authorized to act on behalf of the seller. A well certificate need not be provided...if the seller does not know of any wells on the property and the deed or other instrument of conveyance contains the statement: "The Seller certifies that the Seller does not know of any wells on the described real property."*

*(d) A county recorder or registrar of titles may not record any deed or other instrument of conveyance... from a governmental body exempt from the payment of state deed tax, unless the deed or other instrument of conveyance either contains the statement "The Seller certifies that the Seller does not know of any wells on the described real property," or is accompanied by the well certificate required by this subdivision.*

*(e) The commissioner in consultation with county recorders shall prescribe the form for a well certificate and provide well certificate forms to county recorders and registrars of titles and other interested persons.*

(The designation "commissioner" in the above Paragraph (e) refers to the Commissioner of the Minnesota Department of Health. The Department of Health has published a Well Disclosure Certificate form, including instructions for completing the form.)

The Well Disclosure Certificate covers the following types of wells:

**WATER WELLS:** A water well is any type of well used to extract groundwater for private or public use. Examples of water wells are: domestic wells, drive-point wells, dug wells, remedial wells, and municipal wells.

**IRRIGATION WELL:** An irrigation well is a well used to irrigate agricultural lands. These are typically large diameter wells connected to a large pressure distribution system.

**MONITORING WELL:** A monitoring well is a well used to monitor groundwater contamination. The well is typically used to access groundwater for the extraction of samples.

DEWATERING WELL: A dewatering well is a well used to lower groundwater levels to allow for construction or use of underground spaces.

INDUSTRIAL/COMMERCIAL WELL: An industrial/commercial well is a nonpotable well used to extract groundwater for any nonpotable use including groundwater thermal exchange wells (heat pumps and heat loops).

Questions regarding wells may be directed to the Minnesota Department of Health, Division of Environmental Health, Section of Water Supply and Well Management.

The District/Division Right of Way Engineer will determine whether the conveyance will require a Well Disclosure Certificate or whether the deed should contain the statement as set out in the statute: "The Seller certifies that the Seller does not know of any wells on the described real property."

It is standard practice for Mn/DOT to seal all wells on newly-acquired right of way land. The wells are sealed either at the time a house is moved off the right of way or at the time a house is demolished. In either case, all wells are sealed in accordance with the procedure set out by the Minnesota Department of Health. The Water Well Construction Code requires that abandoned wells must be sealed by a "well contractor" or by a "limited well sealing contractor." Each type of contractor is licensed by the Minnesota Department of Health.

See R/W Manual 5-491.501, Par. 501.13J, pertaining to sealing of wells serving houses to be moved off the highway right of way. Also see R/W Manual 5-491.504 and Standard Specification for Construction, both pertaining to sealing of wells serving houses or other buildings to be demolished. Unanticipated wells encountered during highway construction are also sealed under the same rules and specifications.

**801.7 MARGINAL LAND AND WETLANDS**

Minn. Stat. Section 103F.535 was amended in 1992. Those parts that apply to Mn/DOT are set out below:

**103F.535 RESERVATION OF MARGINAL LAND AND WETLANDS**

*Subdivision 1. Reservation of Marginal land and wetlands. (a) Marginal land and wetlands are withdrawn from sale or exchange unless:*

- (1) *notice of the existence of the nonforested marginal land or wetlands, in a form prescribed by the board of water and soil resources, is provided to prospective purchasers; and*
- (2) *the deed contains a restrictive covenant, in a form prescribed by the board of water and soil resources, that precludes enrollment of the land in a state-funded program providing compensation for conservation of marginal land or wetlands.*

.....

- (c) *This section does not apply to transfer of land by the commissioner of .... transportation ... if:*

- (1) *the land is in platted subdivisions; or*
- (2) *the conveyance is a transfer to correct errors in legal descriptions.*

.....

Prior law required a conservation easement when conveying state marginal land and wetlands. Although the law no longer requires that a conveyance of state marginal land and wetlands be restricted by a conservation easement, Mn/DOT will continue to require such easement. Further, consideration should be given to withholding such properties from disposal. Various policy declarations supporting this position are set out below.

! Legislative policy:

**Minn. Stat. §103A.202 WETLAND POLICY**

*The legislature finds that it is in the public interest to preserve the wetlands of the state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, enhance the natural beauty of the landscape, and promote comprehensive and total water management planning.*

**Minn. Stat. §103A.209 MARGINAL, ERODIBLE LAND RETIREMENT POLICY**

It is state policy to encourage the retirement of marginal, highly erodible land, particularly land adjacent to public waters and drainage systems, from crop production and to reestablish a cover of perennial vegetation.

! Executive policy:

Governor’s Executive Order 91-3: Directing State Departments and Agencies to Follow a "No Net Loss" Policy in regard to Wetlands. It requires that:

- A. All responsible departments and agencies of the State of Minnesota shall protect, enhance, and restore Minnesota’s wetlands to the fullest extent of their authority;
- B. All responsible departments and agencies of the State of Minnesota shall operate to the fullest extent of their authority under the strict concept of "NO-NET-LOSS" of wetlands of the state in regard to projects under their jurisdiction;

(The full text of Executive Order 91-3 appears in *State Register*, 22 January 1991.)

! Federal policy:

President’s Executive Order 11990, dated May 24, 1977, Protection of Wetlands. It requires that:

SECTION 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency’s responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements, ...

The Federal-Aid Policy Guide Non-Regulatory Supplement, dated October 20, 1992, provides the

following guidance:

RETENTION OF EXCESS LAND FOR ENVIRONMENTAL REASONS (23 CFR 713.304(d))

It is the general policy of the FHWA to encourage States to retain, rather than dispose of excess property that could be used to restore, preserve, or enhance the scenic beauty and quality of the highway environment. If retention has a project related benefit such as scenic vistas, present or potential wetland usage, preservation of wildlife habitat, or the prevention of a probable land use of doubtful environmental benefit, States should be encouraged to retain the excess land and classify such property accordingly.

The Mn./DOT Programmatic Environmental Assessment and corresponding FHWA Finding of No. Significant Impact dated May 18, 1984 (FONSI) does not apply to actions involving wetlands. Environmental issues must be specifically addressed for FHWA review and approval (See 801.3).

\*\*\*

A form of CONSERVATION EASEMENT approved by the Board of Water and Soil Resources is set out on the next page. (The RESTRICTIVE COVENANT required by Minn. Stat. 103F.535 and prescribed by BWSR is shown below preceding the conservation easement, as it would appear on the state's quitclaim deed.)

FURTHER, THE LANDS CONVEYED BY THIS DEED ARE NOT ELIGIBLE FOR ENROLLMENT IN A STATE OF MINNESOTA FUNDED PROGRAM PROVIDING COMPENSATION FOR CONSERVATION OF MARGINAL LAND OR WETLANDS. (*the restrictive covenant*)

THE STATE OF MINNESOTA RESERVES A PERPETUAL CONSERVATION EASEMENT AS SET FORTH IN ATTACHMENT 1, WHICH IS ATTACHED AND INCORPORATED HEREIN.

**ATTACHMENT 1 - PERPETUAL CONSERVATION EASEMENT**

The State of Minnesota reserves a perpetual conservation easement on that part of the property conveyed in this deed described as follows:

COUNTY:  
 SIZE (ACRES):  
 LEGAL DESCRIPTION:

This easement shall run with the land and shall be binding upon the Grantees, their heirs, successors and assigns.

The following practices and uses of the easement areas described above are prohibited:

- 1) altering wildlife habitat and other natural features, unless specifically approved by the Board of Water and Soil Resources, its successors or assigns, hereinafter referred to as the "Board";
- 2) agricultural crop production, including cutting of hay, unless specifically approved by the Board for wildlife management purposes;
- 3) grazing of livestock;
- 4) placing, erecting, or constructing any structures or objects of any type, temporary or permanent,

on the easement area;

- 5) spraying of chemicals or mowing, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect public health; and
- 6) draining, filling, or altering wetlands.

FURTHER, the State of Minnesota reserves the right to enter upon the easement area for the purposes of inspection and enforcement of the easement, together with the right to ingress and egress to the easement area from a public road. Established access routes shall be used whenever feasible.

FURTHER, this conservation easement shall not be deemed to prohibit the repair, improvement, and inspection necessary to maintain public drainage systems, provided the easement area is restored to its prior condition to the extent possible.

FINALLY, any ambiguities in this easement shall be construed in a manner which best effectuates the purpose of protecting soil, improving water quality, and enhancing fish and wildlife habitat.

NO RIGHTS HEREIN ARE RESERVED TO THE GENERAL PUBLIC FOR ACCESS TO OR ENTRY UPON THE LANDS DESCRIBED HEREIN.

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*(Procedure is shown on the next page.)*

The general reconveyance procedure set out in 801.8 should be modified for marginal land and wetlands as follows:

1. District Right of Way Engineer

Sends a map and related information directly to Environmental Services for review and determination.

Because the definitions of marginal land and wetlands are technical (see Minn. Stat. §103F.511) and because the Office of Environmental Services refers to U.S. Fish & Wildlife Service maps (for wetlands) and to U.S. Dept. of Agriculture maps (for marginal lands), District R/W should initially submit all proposed conveyances to the Office of Environmental Services for review - except those which District R/W might reasonably conclude upon inspection clearly do not contain either marginal land or wetlands. Further, to carry out legislative intent to protect public waters it is recommended that the District R/W Engineer submit for review any proposed conveyance which might affect water quality, whether the land is platted or not.

2. Environmental Services

Completes an environmental analysis and specifically determines if the proposed conveyance contains marginal land or wetlands, and forwards the completed "Notice to Prospective Purchasers of State Land" to District R/W along with other appropriate comments. At this point the District Engineer must decide whether to withhold marginal land and wetlands from disposal or proceed with the proposed conveyance with the understanding that Mn/DOT will reserve a conservation easement and that the deed will contain the aforementioned restrictive covenant.

3. District

If the decision is to proceed, District R/W sends in reconveyance recommendation memorandum (along with copies of the environmental analysis and "Notice to Prospective Purchasers of State Land") to Central Office R/W, and advises for need for conservation easement and FHWA approval.

4. Legal and Real Estate Conveyance Unit

Advises the Valuation section of the scope of the conservation easement restrictions and area covered by the easement.

(The Board of Water and Soil Resources does not review the proposed conveyance. BWSR has pre-approved both the Notice form (R15308.pp) and the Conservation Easement form (set out above), and has delegated to Mn/DOT (Office of Environmental Services) authority to decide if marginal land or wetlands are present.)

5. Legal and Real Estate Conveyance Unit

Requests FHWA concurrence in the environmental analysis and approval of the conveyance.

If FHWA approval is received:

6. Legal and Real Estate Conveyance Unit

Prepares quitclaim deed including the restrictive covenant and the conservation easement, sends the Notice form to the prospective purchaser at the time purchaser is advised of market value price for the land, and completes the transaction following the general procedure set out in 801.8.

**801.8 RECONVEYANCE PROCEDURE****Entity Requesting Reconveyance**

1. Makes request for reconveyance in writing to the District/Division Engineer.

**Transportation District Engineer**

2. Reviews reconveyance request and forwards it to the District Right of Way Engineer for internal review and approvals by the appropriate District Staff in compliance with 23CFR 710.403 (b).

**District Right of Way Engineer**

3. Has District Staff examine the right of way map, parcel file, condemnation file, and monumentation plat to determine:
  - a. what interest the state has in the property
  - b. the party eligible for reconveyance offer, if any

**Note:** If the land was purchased under Minn. Stat. §161.23, there will be no "eligible party". This statute requires that the land be put up for public bids or conveyed to a political subdivision for public purposes. If the conveyance is to a political subdivision or agency of the state for public purposes, a determination of "eligible party" becomes unnecessary. (See Minn. Stat. §161.44, subd. 1.)

4. Sends acknowledgment letter to the requestor of the property reconveyance. This letter includes:
  - a. information regarding the status of the transaction
  - b. amounts of any administrative fees
  - c. A request to furnish a completed certificate of title

**Note:** In an exchange of access, closing an access will require a deed to the State of Minnesota. Appropriate field title reports and certificates of title are required as part of the District/Division Engineer's recommendation package.

5. Makes recommendation to the District Engineer with supporting information and data regarding the reconveyance request.

**Transportation District Engineer**

6. Sends recommendation memorandum to Director, Office of Land Management. This memorandum must:
  - a. Include the name and address of the person or entity eligible to receive the state's offer to sell and the names and addresses of the adjoining property owners if the lands will be sold by competitive bidding.
  - b. Indicate if an appraisal will be required, or if not required, the dollar amount to be charged for the land.
  - c. Address any access control issues.
  - d. Determine if any of the proposed land for reconveyance contains marginal or wetland. Describe the area to be covered by a conservation easement. (See §801.7 Marginal Land or Wetlands.)
  - e. Indicate if there has been any wells on the property, give pertinent available details as to well location and date of sealing, and if the conveyance will require a well disclosure certificate or certification that seller does not know of any wells. (See §801.6 Disclosure of Wells)
  - f. Contain or address the following statements:

- ! The proposed conveyance will result in no increased hazard to the safety and convenience of the traveling public.
- ! The construction has been completed and there is no need for the subject land in the foreseeable future. The right of way being retained is adequate under present day standards for the facility involved, and the proposed conveyance will not adversely affect the highway facility or the traffic thereon.
- ! Federal, state and local agencies have been notified and have indicated no need or interest in the property.
- ! The land is not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway; nor does the land have a present or potential use for park, conservation, significant wildlife habitat, recreation, or other similar purposes.
- ! The proposed conveyance will not affect lands given special protection under laws outside Title 23, U.S.C., such as wetlands, flood plains, sites on or eligible for the National Registrar of Historic Places, critical habitat, etc.; and the proposed conveyance is consistent with the Finding of No Significant Impact (FONSI) issued by the Federal Highway Administration on May 18, 1984.

**Note:** Environmental requirements must be complied with by Mn/DOT. The above statement is made by the District/Division Engineer to affirm that the proposed conveyance is covered by the September 1983 Programmatic Environmental Assessment and the corresponding May 18, 1984 FONSI. These apply to Conveyances, Temporary Use Permits, and Access Control Changes.

Proposals which have potential for significant environmental impact fall outside the above assessment and FONSI. On these, an analysis must be made of environmental impacts.

#### **Director Office of Land Management**

7. Reviews recommendations of District/Division Engineer and forwards to the Legal and Real Estate Conveyance Unit.

#### **Legal and Real Estate Conveyance Unit**

8. Processes proposed reconveyance through the following Central Office sections for approval: Project Coordination, Environmental Services, the Materials Office if there are gravel pit issues and the Building Section if it involves a maintenance storage site. Prepares Staff Authorization and appropriate maps for the Director of Right of Way and Surveys and State Design Engineer (See 801.9 if FHWA approval is needed).

#### **Director, Office of Land Management and the State Design Engineer**

9. Approve or disapprove reconveyance.

#### **Legal and Real Estate Conveyance Unit**

10. Requests Description Unit to prepare a legal description of the land (or the access opening) to be conveyed. **Note:** If the title to the land is registered, the state's owners duplicate certificate of title must be obtained from the Document Control Section (See §801.12, Par A.)

Forwards the appraisal request package for the area affected to the Valuation Manager with a request for certification of the market value of the reconveyance. If the value is \$5,000 or less, market value may have already been determined in the District. (See §801.4.)

**Valuation Manager**

11. Assigns appraisal task to a staff appraiser. When certification has been made, forwards certified appraisal to the Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

12. Prepares Directors offer letter, which sets forth required price and deadline for acceptance to the eligible party for the reconveyance.

**NOTE:** If no person or entity is eligible under the above statutes to receive an offer directly, or if the person or entity otherwise eligible refuses to pay the appraised value (the asking price), then the file may be forwarded to the Property Management Supervisor for selling by public bid. The eligible party may be advised of the public bid. If the land was purchased as excess under Minn. Stat. §161.23, the file should likewise be forwarded to the Property Management Supervisor for selling by public bid.

**Entity Eligible for Conveyance**

13. Submits payment as directed, to the Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

14. Forwards payment to the Finance Section with coding form and instruction to deposit into Trunk Highway Fund, and to credit the FHWA with Federal share of sale proceeds.
15. Prepares the quitclaim deeds in duplicate for execution by the Director, Office of Land Management.
16. Forwards two copies of the quitclaim deed, and a copy of the right of way map to the Director, Office of Land Management for execution.

**Office of Land Management**

17. Executes both copies of the quitclaim deed on behalf of the state. Returns documents to the Legal and Real Estate Conveyance Unit.

**Legal and Real Estate Conveyance Unit**

18. Secures Assistant Attorney General approval as to form and execution of the quitclaim deeds.
19. Prepares letter transmitting original of the quitclaim deed to the party receiving the reconveyance with instructions to have the deed filed in the Office of the County Recorder.

Sends District/Division R/W Engineer and State Auditors Office a copy of the deed of conveyance. (In the case of an exchange of access transaction, sends copies of both the closing of access deed and the opening of access deed.)

Requests the Mapping and Orders Unit to revise the right of way map and to amend the Commissioner's Orders in accordance with the quitclaim deed.

Completes right of way operations records of reconveyance action.

## 801.9 FHWA APPROVALS

### Legal and Real Estate Conveyance Unit

1. When FHWA approval is required (see §801.3), prepares a letter to the Division Administrator of the Federal Highway Administration for signature by the Director, Office of Right of Way and Surveys, requesting approval of the FHWA concerning the proposed conveyance, and a copy of the District Office recommendation and pertinent attachments.

**Note:** FHWA approval is not requested for a proposed sale of "excess land" purchased under Minnesota Statute §161.23, even if adjacent to an Interstate Highway.

### Division Administrator, FHWA

2. Reviews the requested for reconveyance. Advises the Director of the Office of Land Management whether the reconveyance has been approved or disapproved and sets forth any special stipulations the FHWA may require for approval.

### Director, Office of Land Management

3. Forwards the FHWA reply letter to the Legal and Real Estate Conveyance Unit for appropriate action.

## 801.10 RELOCATION OF CONTROLLED ACCESS OPENING

### Legal and Real Estate Conveyance Unit

1. If the request is for relocation of an opening in an area of controlled access, the presently-open access must be extinguished by conveyance to the state before processing the reconveyance of rights for the requested opening. The following additional steps become necessary:
  - a. The Legal and Real Estate Conveyance Unit prepares the conveyance document by which the landowner will extinguish and convey to the state the existing access. Include Certificate of Title, Mortgagee's Release, and Field Title Report.
  - b. Send the extinguishment deed in duplicate to the person or entity eligible to execute the exchange of access documents, along with a transmittal letter, signed by the Director, setting out appropriate instruction on payment, date of expected reply and return, and other instructions pertinent to the transaction.

**Note:** Because the landowner is conveying an interest in land, instructions on securing signature of spouse, mortgagee, contract for deed vendor, etc. may be appropriate. The Legal and Real Estate Conveyance Unit attorney will advise on these matters.

- c. After landowner has executed and returned both copies of the extinguishment deed (along with whatever payment is due for the exchange), the Legal and Real Estate Conveyance Unit will forward the deed, along with appropriate releases, to the Direct Purchase Unit for coding. The Direct Purchase Unit will forward the documents to the Special Assistant Attorney General for review and approval as to form and execution. Upon approval, the Direct Purchase Unit will then send one of the duplicate originals of the deed to the County Recorder for recording.

## 801.11 RECONVEYANCE RELATED TOPICS

### A. POTENTIAL CONTAMINATED SITES

If the land which is being considered for conveyance was used by Mn/DOT as a maintenance truck station, storage tank depot, or for some other operation which may have resulted in site contamination, environmental consideration must be addressed prior to any transfer.

The Federal Comprehensive Environmental Cleanup and Liability Act (Superfund) creates extensive liability for cleanup costs. The Minnesota Superfund was created by the Minnesota Environmental Response and Liability Act and essentially parallels the Federal Act. Both the buyer and the seller in a real estate conveyance may be held liable under Federal and State Environmental Laws with the potential for considerable cleanup costs.

Before offering a site with a potential for hazardous waste, the Office of Environmental Services should be consulted for environmental technical advise, such as site testing.

In almost all instances the Department of Transportation will not convey property known to have or had hazardous waste without first obtaining a closure letter on the property from the Minnesota Pollution Control Agency (MPCA).

In an instance where it is necessary to convey before receiving a closure letter from the MPCA, the Attorney Generals Office must be consulted prior to any conveyance regarding liability language in the offer letter and/or deed language. It is important that the Attorney General's Staff be given all available site information including results from tests conducted on the site considered for conveyance.

### B. DEPLETED GRAVEL PITS

Before submitting a request memorandum to the central office for reconveying a depleted gravel pit, the District R/W Engineer may tentatively consider whether the pit area and its surroundings are land which might qualify for Mn/DOT's program of Wetland Habitat Mitigation Banking. If such use of the depleted pit is possible, the District R/W Engineer may request that a representative of the Office of Environmental Services review the site on a preliminary basis.

Mn/DOT has often cooperated with DNR by transferring to DNR those depleted pits in which DNR has expressed an interest for possible reclamation for wildlife projects. The District Engineer may recommend, based on preliminary contacts with DNR field representatives, that one or more depleted gravel pits be transferred to DNR.

**SPECIAL PROCEDURES (5-491.800)**  
**MATERIAL PIT LEASES (5-491.802)**

## 802.1 BACKGROUND

Gravel, the main source of most road construction aggregates, must be immediately available in sufficient quantity, of the required quality and at a reasonable cost for projects scheduled throughout the state. This in turn calls for a state-wide approach to gravel procurement by Mn/DOT.

Mn/DOT, through its leasing program and as a major owner of gravel pits assures adequate supply and market competition. Each contractor has the chance to bid competitively with the knowledge that at least the required amount and quality of gravel will be available.

Over the past 75-80 years, the State of Minnesota has acquired over 450 gravel pits in fee ownership or by perpetual easement. These sites contain almost 5800 acres of land and haul roads located throughout the state. Also during this time Mn/DOT has acquired leasehold interests in over 6350 gravel production sites, located mostly on privately owned land.

Mn/DOT keeps 100-150 leases active at any given time, as new construction projects are conceived and planned, any one or more of the inactive leases may be re-negotiated to fill current needs for aggregate.

## 802.2 AUTHORITY

Minnesota Statutes § 160.11, Sub.1 and 161.20 authorize the Commissioner of Transportation to acquire aggregate and borrow pit sites.

### A. 160.11 ROAD OR STREET BUILDING MATERIALS

*Subdivision 1. Acquisition of lands. When the commissioner of transportation, any county board, town board, or governing body of any city, each hereinafter referred to as road authority, shall deem it necessary for the purpose of building or repairing public roads or streets within its jurisdiction, it may procure by lease, purchase, gift, or condemnation in the manner provided by law any lands within the state containing any materials suitable for road or street purposes, together with the right-of-way to the same of sufficient width to allow trucks or other vehicles to pass, and on the most practicable route to the nearest public road or street.*

### B. 161.20 GENERAL POWERS OF THE COMMISSIONER

*Subdivision 2. Acquisition of property; buildings;...contracts. The commissioner is authorized to acquire by purchase, gift, or by eminent domain proceedings as provided by law, in fee of such lesser estate as the commissioner deems necessary, all lands and properties necessary in laying out, constructing, maintaining, and improving the trunk highway system...; [and] to purchase all road material...necessary for the construction, maintenance, and improvement thereof;...*

Minnesota Statute 160.11, Sub.2 provides authority for any road authority to sell to any other road authority any earth material suitable for road purposes except that certain restrictions apply to the Commissioner of Transportation.

C. 161.11 ROAD OR STREET BUILDING MATERIALS.

*Subdivision 2. Sale by road authority. Any such road authority may engage in the processing of crushed rock or other road or street building material for use on public roads or streets within its jurisdiction; and any such road authority may be agreement sell to any other road authority any rock, crushed rock, processed sand or gravel, unprocessed or pit-run sand or gravel, or other earth material suitable for road or street purposes, upon terms and conditions as may be mutually agreed upon by the parties, except that the Commissioner of Transportation shall not sell processed gravel, processed sand, or crushed rock.*

Minnesota Statute 161.411 allows the commissioner to sell certain surplus earth materials to a political subdivision or public agency under specific conditions.

D. 161.411 SALE OF SURPLUS EARTH MATERIALS.

*Whenever the plans for the construction of a trunk highway indicate that there will be a surplus of earth materials from the roadway excavation of such trunk highway, and a political subdivision or public agency of the state indicates that it has use for all or part of such surplus earth materials, the commissioner of transportation may enter into an agreement for the sale of such surplus materials on an equitable basis to such political subdivision or agency. Prior to such agreement the state in its proposal shall require a bid item reflecting either an increased or decreased cost to the state by reason of the proposed sale of such material. If such bid item indicates an increased cost to the state, the materials shall not be sold for less than such increased cost.*

### 802.3 THE ROAD CONSTRUCTION MANUAL (Materials Policy & Procedure)

- A. The process as considered by Mn/DOT's road construction procedural authority, Standard Specifications for Construction, Section 1602:

#### 1602 NATURAL MATERIAL SOURCES

The Department may list possible sources of natural materials in the Contract, but no warranty is made or implied that sufficient quantities of acceptable material are available in those sources, as any source indicated may also be listed as a possible source for other existing or future contracts. It shall also be understood that it is not feasible to ascertain from samples the limits for an entire deposit, and that variations shall be considered as usual and are to be expected. The Contractor shall determine the equipment and work required to produce a material meeting the Specifications.

The Department may acquire and make available to the Contractor the right to take materials from those sources that are listed in the Contract, together with the right to use the property as may be specified in the lease, for plant site, stockpiling, or haul roads. Lease agreements covering any leased material sources listed in the Contract may be examined in the Mn/DOT Office of Land Management. Unless the Department owns the material or has an exclusive lease or permit, the Contractor may make separate arrangements with the owner, including payment for the material. In those listed sources where the Department has a non-exclusive lease or permit, the Contractor shall notify the Engineer in writing within 30 days after award of the Contract as to whether or not the Contractor intends to obtain material therein under the Department's lease or permit. In no case shall any material be removed until proper notice has been given.

Whenever possible sources are listed for natural materials, and the Contractor's operations necessitate the relocation, adjustment, rearrangement, or other work in connection with drainage facilities or utility properties, the work and costs incurred shall be at no expense to the Department and in accordance with written agreements between the Contractor and the owners of such property.

In all deposits where the Department owns the material or in which the Contractor elects to obtain material under the terms of a Department lease or permit, removal of the material shall be in accordance with the following requirements and conditions:

- (1) The Engineer may order procurement of material from any portion of the deposit and may reject portions of the deposit as being unacceptable.
- (2) The Contractor shall do such blending of materials from various layers and areas within the deposit as the Engineer considers necessary, even to the extent of blending materials from the top of the deposit with those from the bottom of the deposit.
- (3) Within the areas owned or leased by the Department, the Contractor shall spread or stockpile the strippings and rejected materials where and as the Engineer directs.
- (4) The Special Provisions will state the prices that the Contractor will be required to pay for the materials removed, along with any other terms under which the Contractor will be required to operate.
- (5) Whenever a "Sand Price" is included in the Contract for securing granular or common borrow, that material shall only be taken from pit areas where the material is least suitable for production of graded aggregate as designated by the Engineer. In no case shall material suitable for the production of Class 5, 5a, 6, or 6a base aggregate be utilized as borrow material without written consent of the Engineer.

The Department's charge for material may be deducted from moneys due on partial and final estimates, or direct payment may be required upon furnishing the Contractor with statements showing the quantities removed to date and the amount due, but in any event full reimbursement will be required before final payment is made on the Contract. Charges will be based on the actual quantities hauled from the source, less any water and other materials added from outside sources prior to weighing.

When possible sources of natural material are not listed in the Contract, and when materials are obtained from sources other than those listed, the Contractor shall acquire the necessary rights and bear all costs of acquiring the material, including the costs of exploring and developing the sources.

The Contractor shall leave the sites from which material has been removed in a neat and presentable condition upon completion of the work. Leveling of waste piles, trimming of slopes and pit bottoms, replacing the stripping, and other cleanup work shall be done by the Contractor at no expense to the Department, unless otherwise arranged for to the satisfaction of the Engineer.

Since Section 1602 describes the relationship between the state and the contractor regarding the use of the aggregate source, it is important that everyone associated with the process be familiar with it. However, it should be remembered that the owner of a leased pit - not owned by Mn/DOT - is not bound by Section 1602 and if there is any conflict between its terms and the provisions of the lease, the lease will govern.

For this reason, the state assures that copies of the lease are made available to the contractors for review as part of the bid procedure.

- B. Sections 5-591.232 (parts A and B) and 5-591.542 (parts A and B) of the May 22, 1990 revision of the Construction Manual also address the process:

#### 5-591.232 REMOVAL OF MATERIAL FROM LEASED PITS

There are two types of leases negotiated by the Department for the taking of materials from privately owned pits. These are exclusive and non-exclusive leases. The engineer and the inspectors must see that materials are removed only in accordance with the terms of the lease, a copy of which should be in the project files. If not, it may be seen in the District Soils Engineer's office. The Contractors should be furnished with a copy of the lease as soon as they indicate that they will operate under the State's lease.

#### ! Exclusive Leases

In these pits the Department has exclusive rights to all material covered by the lease until the lease runs out. Contractors may and should be required to use the material to the best advantage of the Department. A scale person or checker must document the quantities taken unless payment is to be made by cross-section measure or by compacted volume in place in which case no material should be removed until original cross-sections have been taken. An inspector may be needed as the situation warrants.

Counties or cities may be permitted to take material from the pit providing they make application for a stated number of tons or cubic yards of material. The request should be made through the district having jurisdiction of the pit. The governmental unit removing the material is then billed for the material removed according to the terms of the agreement with Mn/DOT.

#### ! Non-Exclusive Leases

When the state has a non-exclusive lease for a material pit the contractor has the choice of removing material in accordance with the state's lease or negotiating a separate agreement with the pit owner. If the contractor elects to remove material in accordance with the State's lease the foregoing instructions apply. If the contractor elects to negotiate its own lease the State's only obligation is to see that payment is made for the material removed. It is not obligated to measure the materials removed; however, to forestall later problems, the Project Engineer should ascertain that the method of measurement has been established. It is also advisable that the contractor and pit owner agree how much material is to be removed; the area from which it will be removed; and the depth to which it will be removed.

- C. 5-591.542 PRODUCTION & PLACEMENT OF AGGREGATE

The special provisions will state when aggregate is to be obtained from designated sources, or if the Department has material available for the contractor's use in pits where the Department has a non-exclusive lease. The contractor may obtain material from any other source if in compliance with all regulations pertaining to permits, pollution control, etc.

#### ! Operation in Designated Pits

Only rarely will the special provisions require that aggregate be obtained from designated sources. When they do, the contractor must operate in accordance with the terms of the lease or,

if the Department owns the pit, according to the Department's instructions.

**!** Operate in Possible Source Pits

Generally, the special provisions or plans will list one or more possible sources of aggregates. The contractor may operate under the terms of the Department's lease or may negotiate their own lease with the pit owner. If the contractor elects to operate under the Department's lease, the Project Engineer must see that the terms of the lease are adhered to, paying particular attention to such items as removal of overburden and restoration of the pit. Adequate records of materials removed will have to be kept so that the pit owner receives just compensation. The "Pit Material Withdrawal Report" form (Fig. 7, 5-591.542) is used for this purpose.

For aggregate obtained from pits where the contractor negotiates leases or owns the pit outright, the Project Engineer shall see that the material meets requirements, that no eyesores are created adjacent to public roads, and that no pollution of air or water is created by the contractor's operation.

## **802.4 PROCEDURE**

### **District**

1. District Materials selects the site to be shown in the construction proposal as a possible source.
2. If not a Mn/DOT owned source, District/Metro Division Land Management negotiates the appropriate lease with the site owner and sends it to Property Management.
3. District Project Engineer keeps a record of material removed from pit, and sends a Pit material Withdrawal Report to Property Management, OLM.

### **Contractor**

4. Successful bid contractor elects to use the listed site and removed aggregate from it for the project.

### **Central Office**

5. The Engineering Special provisions Unit, Central Office lists the selected site in the specific project letting notice.
6. Property Management, OLM sees that the lease becomes fully-executed and ready to use, making any advance payments, if any, and recording.
7. Property Management, OLM initiates payment to landowner and billing to contractor for material removed.
8. Central Office Construction and Contract Administration: issues final acceptance of contracts notice to closeout the project.

## **802.5 PROCEDURE FOR INITIATING LEASE:**

### **MATERIALS OFFICE**

Materials Section together with other district/metro staff and with the Aggregate Unit of the Office of Materials and Road Research:

1. Identify new and existing potential aggregate sources for programmed construction project.

2. Determine site ownership and whether owner is willing to lease.

3. If site is untested arrange for test boring, survey mapping.

#### **DISTRICTS/METRO DIVISION - LAND MANAGEMENT OFFICES**

4. Contact site owner(s) and negotiate an appropriate lease

All entries, except signatures, typed. (All handwritten entries, except signatures, initialed by owners; and authorized Mn/DOT personnel.)

No "boiler plate" changes, deletions or additions.

Indenture paragraph shows owners name(s), marital status and mailing address. Multiple owners can be referenced to an attached Exhibit A. Avoid "aka" situations by listing owner(s) name as it appears on the acquisition document - usually a deed.

5. Check accuracy of legal description (do not include land owned by others.)

Legal description confined to pit site (to 10 acre parcel when possible) and does not include land owned by others.

Lengthy descriptions can be referenced as an attached Exhibit A. Note that an abbreviated description such as NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> is quite acceptable.

6. Check need for special clauses (in addition to the standard clauses which should not be deleted or changed).
7. Review need for a haul road easement (when owners land will not provide sufficient access).
8. Check payment to multiple owners (when possible select one owner as payee and complete Form W-9 for that person).
9. Provide in the lease as to whether the owner is to be paid for reject materials from screening operations. If so, specify amount.
10. Execute two copies of the appropriate lease form, signed by all owners, notarized in the space provided and send them to Property Management (Mailstop 631) together with one copy each of the:
  - ! Field Title Report
  - ! Plat book page showing the property ownership, the approximate location of the pit site and the haul road location, if any
  - ! Completed Form W-9

**Note:** The standard lease form does provide for haul road access to the source across the owner's land. The right to temporarily stockpile extracted material at the pit site is probably implied in the lease. However, the placement of processing plants is not specified in the lease. If this presents a problem, a clause such as the following might be added to the lease: *"The State and its contractors shall have the right to conduct screening, blending and crushing operations at the pit."*

Many pit owners will insist that a clause be added to the lease setting out their particular requirements, such as: stockpiling topsoil, restoring parts of the pit to certain contours, and covering again with the topsoil. Some may request a reference that the source be excavated in accordance with all applicable laws, regulations and ordinances. The standard lease forms provide a blank space for writing such requirements or making reference to an attached Exhibit.

#### **CENTRAL OFFICE - LAND MANAGEMENT - PROPERTY MANAGEMENT**

11. Determine if the lease is a new lease (i.e., a first time lease, as distinguished from a renewal lease). If a new lease, assign the next available Aggregate Source number to the lease. If a renewal lease, use the same number which appeared on the previous Lease. (The District Office may have already received an Aggregate Source number from Property Management, OLM and entered the number on the lease. If not, enter Aggregate Source number at the top of each copy of the lease.)
12. Review lease for errors, omissions, additions, etc., in short, for anything that would affect the lease for acceptance by the Director, approval by the Attorney General's Office for form and execution and for recording by the County Recorder. Resolve any problems with the author of the lease in accordance with Mn/DOT, and other related policies, procedures and legal requirements.
13. Send both copies of the lease to the Director, Land Management for acceptance signature. Director's signature must be acknowledged by a Notary Public in the space provided on the back page of the form.
14. Send both copies of the lease through the Mn/DOT Office of Contract Management to the Attorney Generals Office for approval as to Form and Execution. Contract Management will keep one of the two AGO approved copies for their file and return the other copy to Property Management.
15. Send fully executed lease to the appropriate County Recorder using the County Recorder transmittal letter.

Lease recording is not mandatory but has been done traditionally for many years primarily to give constructive notice to potential buyers and subsequent owners of the State's interest in the property as well as the right to continue that interest if the ownership should change. For this reason it appears prudent to record each lease unless there is a good reason not to.

16. After the recorded lease has been returned, Property Management will:

- ! process County Records invoice for payment
- ! enter lease data into the Lease Expiration and Option Log
- ! send copies of the recorded lease to:

- U Pit owner, together with the pit sheets if they are available from the Aggregate Engineer at this time, using landowners lease transmittal letter.

- U Department of Finance, Accounting Services, Quality Control, 400 Centennial Building (per Stat. §16B.06, Subd. 2).

- U Aggregate Engineer, Office of Materials Research and Engineering. This copy serves as an "ASIS Data Entry" form for updating the ASIS file.

- U One copy each to District Materials Engineer, District Land Management R/W Engineer, District Real Estate Representative and Area Maintenance Engineer.

The original, recorded lease document is kept in the material pit folder in the Property Management files where it becomes part of the permanent record of the aggregate source site and remains available for future reference.

17. Request an Attorney's Certificate of Title. This certificate can be ordered directly from Land Management - Legal and Real Estate Conveyance Unit and should be done early enough so that any pre-payment can be made in a timely way and/or before source is listed in the construction proposal.
18. Review the lease payment requirements, especially if an advance payment is to be made, keeping in mind that:
  - ! if the Field Title Report shows a mortgage on the property, a consent form may be required from the lender before any payments can be made. Contact the landowner on this.
  - ! assure that each of the owners, including the deed holders, if a Contract for Deed, transaction is involved, are either party to the lease or must have completed a waiver of interest. Waivers may also be required from those having a leasehold interest in the property, such as renters,
  - ! if required, assure all judgements and liens against the property must be satisfied prior to any payments.
  - ! if required, all taxes and assessments, ditch liens, etc., must be current.
  - ! the interest of all leases and easement holders must be considered and where necessary either subordinated, disclaimed or made parties to the lease.
  - ! consider the requirements of any of a variety of state and federal conservation programs that may apply to the property.
19. Prepare and process advance payment, if one is required.
20. At least once each month review the Lease Expiration and Option Log to determine if, during the upcoming two month period, any of the following will occur:
  - a) A pit lease will expire. Should a new lease be negotiated? This is determined in the District Office. Send notice to District Materials Engineer with copies to District R/W Engineer and Aggregate Engineer.
  - b) If a renewal option must be exercised by timely notice or it will be lost. (For example, one of the standard lease forms requires a 30 day advance notice in writing, sent by certified mail to renew.)
  - c) If an option for a borrow pit lease must be exercised.

## **802.6 PROCEDURES FOR MAKING THE PIT AVAILABLE TO THE CONTRACTOR**

When a pit is to be listed in the contract letting as a possible source (only rarely will a pit be listed as a "designated" source, i.e., a required source for material). Engineering Special Provisions will by memo ask Property Management for some basic information about the pit. the request memo will refer to the pit number (the Aggregate Source number), the county in which the pit is located, the state project number, and the letting date.

Property Management in reply will supply the following information to Engineering Special Provisions:

1. Type of lease; exclusive, non-exclusive or stated owned
2. Lease expiration date
3. Price(s) of material

The price of gravel by the units listed on the lease: The materials pricing box has been designated to accommodate a variety of options. The most commonly used space in the box will be for the price of aggregate per cubic yard, loose volume. (C.Y., L.V.) The remaining three spaces are simply mathematically derived values of the C.Y., L.V. \*price based on standard conversion factors:

$$\begin{aligned} \text{C.Y., L.V.} \times 1.2 &= \text{E.V. (Excavated Volume)} = \$.50/\text{C.Y., L.V.} \times 1.2 = \$.60/\text{C.Y. E.V.} \\ \text{C.Y., L.V.} \times 1.3 &= \text{C.V. (Compacted Volume)} = \$.50/\text{C.Y., L.V.} \times 1.3 = \$.65/\text{C.Y. C.V.} \\ \text{C.Y., L.V.} \div 1.4 &= \text{Ton (English Ton)} = \$.50/\text{C.Y., L.V.} \div 1.4 = \$.357/\text{Ton} \end{aligned}$$

(Mathematically the value conversion of \$.50/CY-LV would equal \$.3571428 per Ton; however, in keeping with the concept of significant numbers, it would be appropriate and desirable to round to the nearest  $\frac{1}{10}$  of a cent, in this case: \$.357. per Ton)

\* CY-LV is also known as vehicular measure. See Grading and Base Manual, Sec. 5-692.430, rev. 10-14-94 and rev. 10-1-96 for a more complete discussion of conversion factors.

Also requested would be the name of the person supplying the information and the date it was provided.

Return the completed request form to Special Provisions and keep a copy of it to start a Contractor File for the successful bidder. During the course of the project letting process, the request form may be augmented by other field originated information, usually Soils and Design Recommendation Memos as well as bid notices to contractors which originate in the Central Office.

When received, each document should be reviewed for aggregate source listings. Many don't have them and can be discarded. Those that do should be checked for accuracy and any discrepancies brought to the attention of the appropriate person.

Successful bidders are announced in the Letting Tabulation prepared a few days after each scheduled bid opening and sent to Property Management by interoffice mail. This notice shows a summary of the successful bid information for the projects listed on the dated bid notice, including the name of the winning contractor. If the Letting Tabulation should fail to show an expected project check the Tentative Schedule of Lettings, which is also sent to Project Management by interoffice mail, to see if that project has been rescheduled.

When a successful bidder has been identified for any project where aggregate sources have been listed, prepare the two part "Contractors Intent" memo (Forms R5048.KB-1 & 2) for transmittal to the appropriate Project Engineer together with two copies of the leases, deeds or other acquisition documents for each of the listed sources. The Project Engineer should then get the required information from the contractor and return it to Property Management. If the contractor has elected to use any of the listed aggregate sources, the Project Engineer should also include the partially completed Pit Material Request (Form TP-02506-02) for each pit to be used. Upon receipt of this form, Property Management will:

- ! review the request for completeness and accuracy and make any additions and corrections

that may be needed. Consult with the Project Engineer when necessary.

- ! assign the next consecutive number to the request from the Withdrawal Order Number Log and complete the appropriate sections of the form. Director's "approval" signature is stamped in the space provided.

Please note that the Withdrawal Record section of the form should also be completed using the volume and price information given. This section then becomes the official record of the use of the specified material source for that specific project.

Also note that once numbered and approved, the request can be added to or modified, if required, without the need for an additional withdrawal order number.

- ! Retain the original record in the Property Management files and return a copy of it to the Project Engineer.

As the project proceeds, the Project Engineer will record the amounts of material removed from the source by the contractor. At previously agreed upon intervals (monthly, annually, end of project, etc.) the Project Engineer will send a completed Pit Material Withdrawal Report (Mn/DOT Form 2507) to Property Management for processing for payment to the landowner and/or billing to the Contractor.

Please note that the reporting and payment interval may be specified in the lease. If not, then the interval should be made to allow reasonable and timely payments to the landowner.

When District Maintenance crews remove material from any site, the Area Maintenance Engineer or Maintenance Supervisor should follow the same procedure required of the Project Engineer so that landowners of leased sources can be paid and withdrawal records kept.

Upon receipt of the withdrawal report, Property Management will:

- ! review the report to verify that it is complete and accurate.
- ! update the Pit Material Request
- ! if the material source is leased initiate payment to the landowner and prepare the billing for the contractor.  
  
if the source is state-owned the contractor billing only is required.
- ! send a copy of each withdrawal report to the Aggregate Engineer for depletion record purposes, per request memo dated 4-6-93.

## **802.7 PROCEDURES FOR PAYING THE PIT OWNER**

Payment to the pit owner is an obligation incurred by Mn/DOT under the lease, independent of Mn/DOT being reimbursed by the contractor.

- ! The reviewed Pit Material Withdrawal Report becomes an invoice billing the State of Minnesota by completing the Invoice and Approval sections of the document and by providing additional information on the face of the Withdrawal Report form: name(s) of payee(s), mailing address for payment, vendor number and such payment accounting information as charge identifier and work

item number.

- ! Send the completed and approved original Withdrawal Report to Mn/DOT Finance for completion of the payment process. Attach a copy of the report to the original pit Material Request for record keeping purposes.
- ! Send copies of the updated Pit Material Request and the Withdrawal Report Invoice to the Project Engineer for record keeping.

Please note that advance payments required by the terms of the lease before material may be removed and the payment of incidental expenses, such as title opinion fees and document recording fees, are also made following the procedure just described except that other types of invoices will be used by Property Management to effect those payments.

- ! advance payments, title opinion fees and other similar payments should be made on invoice form R38862G.KBW.
- ! recording fee payments should be made using the recorders invoice which is augmented with same information used to convert the withdrawal report into a payment document.

## **802.8 PROCEDURES FOR BILLING THE CONTRACTOR**

The Contractor is billed for the material removed on Invoice form R32876D.KBW which is completed using information from the material withdrawal report, the appropriate S.P. file plus sales tax. Refer to the Pit Material Request file for examples of completed invoices.

The completed invoice is sent to Mn/DOT Finance, Accounts Payable for billing with copies to the District and C.O. files. Since Finance does not issue payment notices you will not hear further from them. They do however go after their delinquent payment accounts when necessary which makes closure of contractor's file easier.

About once a month the Office of Construction and Contract Maintenance will send a Final Acceptance of Contracts notice to Property Management. This notice shows a listing of the S.P. contracts that are being closed in that report period. This listing should be reviewed for any project where material sources were involved. Any that were should be checked to see that all material removed, if any, has been paid for and/or billed to the Contractor. any discrepancies should be resolved as soon as possible and the appropriate records updated then the file can then be closed and the contents recycled.

## **802.9 RELINQUISHMENT OF A GRAVEL PIT**

Occasionally Mn/DOT has been asked by a pit owner to relinquish all or part of the state's lease interest in a pit that is not being used by Mn/DOT. Such requests should be referred initially to the District R/W Office. Such relinquishment should not be granted if there is a reasonable chance of prejudice to Mn/DOT's need of the pit for maintenance or a construction project. District R/W and District Materials should submit written concurrence. Such relinquishment must be approved by the Director, Office of Land Management. A sample form of full relinquishment of a pit lease is Form R4863.PP in the R/W word processor system.

A related problem is correcting an error in a lease. For example, if an error was made in the legal description of the pit so that more land is described than actually owned by the party signing the lease, a corrective lease should be executed by both parties and recorded. The caption of the new lease might read: "Corrective Non-Exclusive

Material Pit Lease". The lease might contain a correcting paragraph explanation such as the following:

This document is given to correct the description that appears in that lease dated \_\_\_\_\_, executed by the above named parties and recorded on \_\_\_\_\_ in the office of the County Recorder in and for \_\_\_\_\_ County, Minnesota, as Document No. \_\_\_\_\_.

## **802.10 MISCELLANEOUS TOPICS AND LEASE FORMS**

The following topics and lease forms are related to gravel pit operations. They are grouped here rather than scattered throughout the PROCEDURE steps of the preceding section so as not to obscure the explanations of procedure. However, since the process involves the acquisition of rights associated with real estate ownership it is quite probable that any one or more of many other supporting documents may also be required to assure the validity of any one lease both for recording and for payment purposes.

### **A. Mn/DOT-Owned Pits**

Sometimes it may be more advantageous for the state to purchase land containing aggregate material than to try to lease. When leases are difficult to get, or too costly, or material is needed by maintenance operations over a long period, the District Engineer may initiate a request for purchase. The authority for purchase of land for a gravel pit (or a borrow pit) is contained in Minn. Stat. § 160.11 and Minn. Stat. § 161.20 cited earlier. The purchase procedure is similar to acquiring highway right of way by direct purchase. The Direct Purchase supervisor may arrange for payment for the land out of encumbered gravel pit funds, provided sufficient funds remain for gravel purchases.

Federal requirements pertaining to gravel pits are contained in 23 CFR Section 635.407(e). They state that Federal funds can participate in 1) the cost of material or 2) the fair and reasonable value of the material, whichever is less. If pits are used for several jobs, the accounting that would be required could become cumbersome. Therefore, FHWA has suggested that Federal funds should not be used in the acquisition of material sites. Instead, Federal participation would apply to the unit costs of material on a project-by-project basis.

Copies of deeds for Mn/DOT-owned gravel pits are kept in the Property Management record files. Most of these pits are considered to be intermittently active, and many are used on a continuing basis for supplying sand and gravel to highway maintenance crews. They are also listed when needed as possible sources in highway contract lettings. The total acquisition files are kept at the Record Center.

The price for material from Mn/DOT-owned sources will be determined by the District and should be at least equal to prices being charged by privately-owned pits, if any, in the vicinity unless there is good reason to price lower.

Mn/DOT-owned material can be likened to "money in the bank", to be used when private sources are no longer available for one reason or another. For this reason, it is perhaps prudent to use private sources as much as possible reserving Mn/DOT material for the future.

### **B. Other Sources**

Other agencies, both public and private, such as the U.S. Forest Service, Minnesota DNR, the various counties and townships throughout the state as well as forest industries, railroad companies and others also own material source sites that are used by Mn/DOT.

When these sources are used, the District will negotiate the agreement, usually in the form of a permit, with the agency who will then, almost always, write the agreement on their own form.

Unless these agreements have been prepared for review by Mn/DOT's AGO representative, and they need not be, they will not be sent there for approval. The same is true for recording.

Normally, there will be no problems especially with Forest Service and DNR agreements. With others, however, it would be prudent to carefully review all conditions of the agreement before Director's signature.

Occasionally the District will identify a source owned by another agency and leave it to the successful construction bidder to actually complete the agreement. In those instances Mn/DOT will often request a letter of intent from the agency prior to the bid announcement which stipulates the conditions of the permit, such as the price, quantity and location of the material. These conditions then appear in the bid notice so that all contractors are equally informed.

Since the ground rules involved with this procedure can be quite variable, depending on the circumstances, and therefore difficult, if not impossible to fully describe here, it is enough to say that the system works and has provided another way for Mn/DOT to do business.

#### **C. "SHPO" Clearance**

At some point prior to making the pit available to the contractor, usually during the District planning phase after the aggregate sources have been identified, clearance to use those sites must be gotten from the State Historic Preservation Office (SHPO).

Most state owned sources already have SHPO clearance. Clearance on leased sources must be obtained by the C.O. Office of Technical Support, Cultural Resource Unit at the time that the source is identified for use on the S.P.

If the contractor elects to use a source other than what is listed in the proposal, SHPO clearance on that site then becomes his responsibility and he must provide the clearance document to the Project Engineer before material from that source can be accepted.

#### **D. Local Regulations and Material Site Reclamation:**

The need for local regulation of material source sites is well-presented in the DNR publication A Handbook for Reclaiming Sand and Gravel Pits in Minnesota, July 1992 by Cynthia G. Buttleman. As the title indicates, the handbook also serves as an excellent reference for reclaiming those sites.

Considering the rewards that landowners gain through a progressively reclaimed removal operation, it appears reasonable to expect that at least some of that planning will be reflected in the conditions of the lease that they execute. If the use and reclamation of the site is governed by a local ordinance, it should be referenced in the lease and a copy made available to Property Management.

As the handbook notes: "In Minnesota, sand and gravel mining is increasingly viewed as a temporary use to be followed by another land use that is more compatible with the surrounding landscape."

#### **E. Borrow Material Source Agreements:**

The term "borrow material source" or "borrow pit" commonly refers to a site, usually a farm field, that contains the required quantity of low-cost material suitable for embankments or fill. Occasionally the site is located immediately adjacent to the highway project and can be purchased as right of way land. Usually, however, the site is located within a short haul distance and must be leased.

The borrow site is not necessarily a pit as such. It is often the top of a field hill that is cut down to blend with the adjacent topography or it can be a shallow skimming of the land over a large area after the topsoil has been removed.

Because borrow pits are normally used for a single specific project they are not assigned an ASIS number but are identified with the appropriate S.P. number followed by a number or letter making the designation unique to that particular job.

Since the availability of suitable sites might be quite limited, the exclusive lease form may be preferred over the non-exclusive form, thus avoiding the possibility of having to share the borrow source with others. Two versions of the standard exclusive lease form are available.

- ! R7603.KB: which allows for payment by the amount of material removed at negotiated prices but with no pre-payment.
- ! R8613.KB: which calls for a negotiated pre-payment cost which covers all of the material removed regardless of amount.

Normally a volume or tonnage limit is not specified in the lease but occasionally the land owner may require it, perhaps as a check to limit the extent of the mining, especially for a lump sum lease.

Regardless of the form used, the borrow pit lease is usually first secured by an Option to Lease (R7752.KB) rather than entering directly into the lease itself. The appropriate lease form is then attached to the option as the EXHIBIT A.

The cost of the option, usually negotiated at a few hundred dollars, is minor compared to the pre-payment cost of the exclusive lease. If, for whatever reason, the construction project is delayed for a year or so the option can be allowed to expire with no great loss. The loss of an expired lease, however, with a large pre-payment, could be quite expensive.

The processing sequence for borrow pit options is similar to other material pit leases with some differences:

- ! District negotiates Option to Lease and the conditions of the borrow pit lease with the landowner.
- ! The signed option together with the appropriate, unsigned borrow pit lease as EXHIBIT A is sent to Property Management.
- ! Property Management will process the option for acceptance and payment and, if required, request the attorneys certificate of title.
- ! The District will notify Property Management when the option is to be exercised.
  - " For "possible source" borrow sites this would be when the contractor elects to use the source.
  - " For "designated" borrow sites this would be at the time the project is let.
- ! Property Management will exercise the option by giving the owner written notice in accordance with the terms of the agreement which will normally include the execution of the EXHIBIT A lease by the owner.

- ! Upon receipt of the executed EXHIBIT A agreement from the owner Property Management will process it for acceptance and recording, if required - sometimes the landowner will ask that the content of the lease, especially the payment information, not be made public - and, if required make the advance payment to the owner.

Occasionally borrow pit leases are written on the standard non-exclusive lease form (R4075.KB) for one purpose or another. These leases can be simply captioned: Borrow Pit Lease. Payment would be based on the appropriate unit of measure as the material is removed.

**F. Other Material Source Agreements:**

Construction aggregate may be available in the market in a variety of forms, most of which have been covered in this narrative. For those that have not been covered - the acquisition of stockpiled material, for example - creative lease writing can be another option, provided that the basic rules that govern the process are followed.

In these rare instances, the cooperative efforts of the District and Property Management will surely find the solution to the problem regardless of its complexity.

**G. Pit Sheets:**

Whenever a gravel pit is shown in the bid notice as a possible source of material for the highway project, copies of the material acquisition document together with the pit sheets for that source are made available to prospective bidders for review.

The term "pit sheets" refers to the map and data sheets that are prepared from the information obtained from test drilling the material source site. The map shows the location of the site and each test hole. The data sheet shows a summary of the quantity and quality of the material as indicated by an analysis of the above hole samples.

**H. Lease Expiration Dates and Lease Option Dates:**

A reminder file (Lease Expiration and Option Log) should be kept in which each lease is listed by the month in which it will expire. Also include any leases having a renewal option clause that must be exercised by giving written notice by a date within the month. This file or log book should be reviewed regularly, approximately six to eight weeks before the expiration date or option renewal date. Leave enough time to notify District R/W Engineer, district Materials Engineer, and the Aggregate Engineer, to receive back their replies, and to prepare a notice to owner.

An option to renew is the pit owner's agreement to prolong the term of the lease. As such the offer must be accepted in precisely the terms in which it was given. The following wording is an example:

The State of Minnesota, Department of Transportation, elects to exercise the option for renewal of the lease covering the above referenced pit for a period of [two] years (through \_\_\_\_\_  
\_\_\_\_\_) in accordance with the Material Pit Lease signed by you on \_\_\_\_\_  
\_\_\_\_\_.

Send copies of the letter to District R/W Engineer (Land Manager), District Materials Engineer and Aggregate Engineer. Also, consider requesting a continuation of the Attorney's Certificate of Title.

**I. The Lease Period:**

If the gravel pit is going to be listed as a possible source for a highway contract letting, District R/W must negotiate a lease period long enough to accommodate the total time needed: the elapsed time until the letting plus the period that the pit will be used during the highway project. If two years is not long enough, then use the renewal option portion of the standard lease form. A longer base term is preferred over using a renewal option clause; the state's contractor would then not have to rely on the state giving timely notice to the pit owner to effect the renewal of the lease.

**J. DNR Gravel Pits:**

The Minnesota Department of Natural Resources administers (approx.) 166 sand and gravel leases in 19 counties (information taken from DNR Gravel Pit Reclamation Handbook). Some of the DNR pits are leased to Mn/DOT. These leases are initiated by District R/W contacting the local DNR field representative. The lease will be prepared by Central DNR and will appear on the standard DNR gravel pit lease form. Mn/DOT will be listed as the tenant or user of the pit. Central DNR will send the lease to Mn/DOT Office of Right of Way and Surveys for execution by Mn/DOT.

**K. ASIS - Aggregate Source Information System:**

ASIS was developed by Mn/DOT in 1985 as a computerized way to store and retrieve a variety of aggregate source information including data from about 450 state owned pits and 6550 state leased pits.

The Aggregate Unit of the Office of Construction and Material Engineering maintains the data base which is available statewide to about 65 users by computer.

New aggregate source numbers will be assigned by the Central Office, Property Management Unit. Newly leased or purchased aggregate sources will be assigned numbers when requested by the District Right of Way or Land Management Engineer, or when the document is received by Property Management. Commercial sources will be assigned numbers only when requested by the Concrete Engineer, Office of Materials Research & Engineering.

The aggregate source number is a 5-digit number of which the first two identify the county where the site is located with the remaining three acting to provide sequential identity that is unique to that particular location within the county.

Example: Non exclusive Material Pit Lease No. 64200 would be the 200<sup>th</sup> lease taken in Redwood County on land specifically described in the lease. The number would be unique to the land described and would not be duplicated within the ASIS data base.

All aggregate sources: state owned and leased pits, "concrete" pits (most of which are commercial pits and quarries), pits located in several adjoining States and Provinces of Canada are assigned aggregate source numbers so that they can be identified in ASIS.

This is done with an unnumbered Mn/DOT data entry form designed for that purpose which is completed by Property Management, where each source number is assigned, and sent to the Aggregate Unit where the ASIS data bank is maintained and updated and made available to the computer customers.

Exception to the system: Borrow pits are not assigned aggregate source numbers under the ASIS system. Since borrow pits are acquired for specific projects, the numbering of borrow pits will include the S.P. number for reference, followed by a number or letter designation unique to the particular job.

In 1995, the ASIS Database Task Group developed a 13-digit "geocode" number designed, to identify aggregate source sites to a  $\pm$  10-acre legal subdivision to more accurately monitor and control aggregate quality.

Geocodes may be assigned to aggregate sources however, since they are basically geographic site location numbers they will complement, not replace, the aggregate source number which locates the lease within ASIS.

Currently, the typical lease legal description will normally identify a 40-acre tract or larger. The geocode number requires legal descriptions that identify tracts, ideally, to 10-acre tracts. As time goes on and the use of the geocode number increases it would be appropriate and desirable to confine lease legal descriptions to the 10-acre parcel in which the aggregate source is actually located. This will require extra effort by the negotiator but the accuracy gained will significantly improve Mn/DOT ability to uniformly process, store and retrieve all aggregate material data.

Additional information regarding the relationship between ASIS, material pit leasing and aggregate sources can be found in Section 402.02.06 AGGREGATE SOURCES of the Geotechnical and Pavement Manual dated April 1, 1994 which is interesting to read, but much too lengthy to be added here.

#### **L. Lease Forms:**

- ! Non-exclusive Material Pit Lease
- ! Option to Lease
- ! Exclusive Material Pit Lease (Exhibit A)  
Cubic Yard Payment
- ! Exclusive Material Pit Lease (Exhibit A)  
Lump Sum Payment

#### **Non-Exclusive Material Pit Lease**

As noted, the non-exclusive nature of this lease allows the landowner and contractor, for whatever reason, to negotiate a separate agreement providing a degree of flexibility that apparently appeals to many owners. The standard leasing period is two years. If a longer time period is desirable it may be possible to negotiate additional two-year "option" periods with the landowner. New leases as distinguished from renewal leases must be assigned an aggregate source number so that the source can be added to the Aggregate Source Information System (ASIS) data base, these numbers are assigned by the Property Management Unit. Standard leasing period is two years.

#### **Option to Lease & Exclusive Material Pit Leases (Cubic Yard & Lump Sum Payment)**

The Option to Lease forms together with the two Exclusive Material Pit Lease forms, Exhibits "A", are most often used to acquire borrow pit sites for specific work projects. They are also used to assure material in situations where only few suitable aggregate sites can be found, and those subject to control by contractors, or where the prospective site may be too small to accommodate more than one contractor at a time.



In these instances, if the contractor elects to use the optioned site, the appropriate lease form is then executed; if not, the option is simply allowed to expire. For this reason, the landowner will almost always require an advance payment, the amount determined by negotiations, as compensation for holding the site for the option period.

Sometimes the "borrow" and aggregate sites will be designated in the project plan as the only acceptable source for the project and must be used by the contractor. Then the appropriate lease can be negotiated directly with the landowner without the option agreement.

\*\*\*\*\*

- ! Relinquishment of Material Pit Lease, R4863.BP (Rev. 2-97): used when it is desirable, for one reason or another, to release either party from a lease agreement prior to its expiration date. Please note that relinquishment requests are referred to the District and are approved by the Director with written concurrence by the Aggregate Engineer.
- ! Corrective Lease, Mn/DOT form 25681, a variant of a standard lease form used to correct an error in an existing lease, usually a legal description. This form was rarely used in the past and now requires revision to recording standard format.
- ! Affidavit of Scrivener's Error, R17293.KBW (Rev. 2-97): a more simple and direct way of correcting errors in an existing lease.

Requires:

- " execution by the same person that wrote the original lease.
- " a contact with the County Recorder to verify acceptance of the affidavit as a corrective instrument.
- ! Waiver of Interest, R4981.KB (Rev. 12-93): used to document a disclaimer of interest in the lease by any person or entity, other than those signing the lease, as "owners", who may have an interest in the land.
- ! Waste Pit Permit, R4065.KBW (Rev. 2-97): used when it is necessary to have a site for dumping or spreading excess earth material from the road work on a specific construction project.
- ! Haul Road Easement, Mn/DOT 25035: used when it becomes necessary to acquire pit access additional to that granted in the lease. Rarely used; the form now requires revision to recording standards.
- ! Consent of Mortgage, no form number: used when it becomes necessary to subordinate the lease to the mortgage.
- ! Form W-9, IRS Form: used to document owners social security or Tax ID number, which is needed to get a Mn/DOT vendor number prior to payment for materials removed.



- ! Attorney's Certificate of Title, Mn/DOT 2508 (12-76): states the condition of the title, based on an interpretation of instruments recorded in various county offices, of the ownership of a specific parcel of real estate and of the encumbrances to which it is subject.
  
- ! Field Title Report, Mn/DOT 25085 (9-92): is a supplement to the Certificate of Title that fully identifies all parties of interest, the basis for their interests, the occupancy of the property and any physical factors that may affect its acquisition.

**SPECIAL PROCEDURES (5-491.800)**  
**CEMETERY LANDS (5-491.803)**

**803.1 POLICY**

Cemetery lands cannot be acquired by nonconsensual eminent domain proceedings. Where cemeteries are located within the proposed right of way limits it is necessary to acquire the right of way through direct negotiation. Laws governing cemeteries are found in Minnesota Statutes Chapters 306 and 307. As to public cemeteries, "no road or street shall be laid through the cemetery or any part of the lands of the association without the consent of the trustees." (§306.14) As to private cemeteries, "no road or street shall be laid through the same without the consent of the owners." (§307.09) As to both, "a cemetery may not be relocated without the consent of the" trustees or owners. (§306.141 and §307.12)

**803.2 PROCEDURE**

District

1. The relocation of graves must be done pursuant to Minn. Stat. §149A.96 disinterment and reinterment. This requires the written authorization of the person legally entitled to control the remains or a district court order and a disinterment - transit - reinterment permit.
2. Pursuant to Minn. Stat. §306.243, subd. 2. If there is an isolated grave or graves located outside the boundaries of a cemetery or outside an abandoned or neglected private cemetery, the county board of the county where the grave is located may order the disinterment and the reinterment of the body in some cemetery controlled by an organized cemetery association.
3. If Indian burial grounds are involved, consult Minn. Stat. §307.08 Subdivisions 8, 9 and 10.

NOTE: Consultation with the Central Office Legal and Real Estate Conveyance Unit should occur at the earliest possible time with regard to any plans to acquire cemetery lands.

**SPECIAL PROCEDURES (5-491.800)**  
**COUNTY AND JOINT COUNTY (Judicial)**  
**DITCH DRAINAGE SYSTEMS (5-491.804)**

**804.1 POLICY**

## STATUTORY AUTHORITY:

- A. The laws governing drainage ditch systems are Minnesota Statutes, Chapter 103E, Drainage and for Watershed Districts, Minnesota Statutes 103D.625, drainage system within a Watershed District.

- ! Under the provisions of Minnesota Statutes, 103E.701, the Department of Transportation is charged with the responsibility of keeping the bridges and culverts through a trunk highway in good repair.
- ! Under provisions of Minnesota Statutes 103E.705, the drainage authority is charged with the responsibility of keeping a ditch in proper function. The drainage authority, or the Ditch Inspector appointed by the drainage authority, shall examine the drainage system as required. If the drainage authority finds the ditch in need of repairs they can order the work done as prescribed by law.
- ! Redetermination of Benefits may be made to reflect reasonable present day land values or when benefited areas have changed (Minnesota Statutes, Chapter 103E.351).
- ! Ditch Drainage Systems may be directed by the Ditch Authority to be under the jurisdiction of a Watershed District (Minnesota Statutes 103D.625).

Note: Whenever a drainage ditch is affected in any manner by any entity, an action to establish, alter, or maintain any portion of a drainage system must be instituted through the authority charged with the governing of the particular system.

## B. DITCH CLASSIFICATIONS:

1. County Ditch. A county ditch is a drainage ditch system and/or tile line lying wholly within the boundaries of any one county and the ditch is under the jurisdiction of the Board of County Commissioners. Proceedings shall be filed with the County Auditor.
2. Joint County Ditch. A joint county ditch, formerly known as a Judicial ditch, is a drainage ditch system and/or tile line lying in two or more counties or servicing more than one county and the ditch is under the jurisdiction of the particular Joint County Ditch Authority. Proceedings shall be filed with the County Auditor of the county containing the largest area of land over which the proposed ditch passes or which the improvement is located.

**804.2 PROCEDURES FOR ACTIONS INITIATED BY PARTIES OUTSIDE MN/DOT**

- A. Procedures with reference to Article III of Policies, Subdivision A.

**Entity Initiating**

1. Describes the lands over which the ditch work is to take affect in a petition by quarter-quarter sections or government lots or fractions thereof.
2. Files a petition with the County Auditor, or ditch authority instituting a procedure effecting a drainage system.

**Ditch Authority**

3. Reviews ditch petition as to legality and proper form.
4. Appoints a Ditch Engineer if required, provide for proper review, establish a hearing date, and notify property owner's and government agencies in accordance with Minn. Stat. 103E, which will include the Commissioner of Transportation, if affected.

**Commissioner of Transportation or Mn/DOT Recipient of Notice**

5. Forwards notice to Director, Office of Land Management with direction to take appropriate action.

**Director, Office of Land Management**

6. Forwards notice to Legal and Real Estate Conveyance Unit with direction to take appropriate action.

**Legal and Real Estate Conveyance Unit**

7. Checks the Right of Way ditch files and/or ROWIS to see if there has been any previous action with regard to the particular drainage ditch facility. Submits copy of notice to the office of the Assistant Attorney General assigned to the Department of Transportation and the Transportation Department's District Engineer in whose district the ditch is located.

**District Engineer**

8. Assigns District Right of Way Engineer or other representative from the District Office to review, attend hearings if deemed necessary and requests assistance from the Office of the Attorney General when deemed necessary.

**District Right of Way Engineer**

9. Attends hearing and submits written report on hearing to the Director, Office of Land Management, with copies to the District Engineer and the Legal and Real Estate Conveyance Unit. Report should contain any trunk highway affected by land designations as to quarter-quarter sections or Government lots, the proposed sizing of any waterways and recommendations as to acceptance or appeal.

**Legal and Real Estate Conveyance Unit**

10. Enters the ditch classification, its numerical designation, the county or counties affected, the date of hearing and the date of report in ROWIS. Establishes a file for the drainage facility if there has been no previous file set up.

**Ditch Authority**

11. If the ditch authority finds the proceedings to be in order, namely that the total benefits exceed the cost and that the work is necessary to the public benefit, issues an order establishing the facility or procedure.

**Director, Office of Land Management and/or Legal and Real Estate Conveyance Unit (APPEALS)**

12. Reviews any request for appeal and request Assistant Attorney General to take appropriate action on behalf of the State.

**Assistant Attorney General**

13. Determines prosecuting of the appeal and need for subsequent trial. If the file does not contain enough information, seeks assistance from the Legal and Real Estate Conveyance Unit in securing final report of ditch viewers, plans, maps and hydraulics information.

**County Auditor**

14. Signs and submits invoice to the State for assessed costs to the Commissioner of Transportation.

**Commissioner of Transportation or designee**

15. Submits assessment to the Director, Office of Land Management with directions to take appropriate action.

**Director, Office of Land Management**

16. Submits assessment to Legal and Real Estate Conveyance Unit with directions to take appropriate action.

**Legal and Real Estate Conveyance Unit**

17. Submits assessment notice to respective District Engineer for investigation. (See 47b or 48b).

**District Engineer**

18. Investigates the assessment and advises the Director, Office of Land Management, by memo, if it should be paid.

**Director, Office of Land Management**

19. Submits District Engineer memo to Legal and Real Estate Conveyance Unit with directions as to payment processing.

**Legal and Real Estate Conveyance Unit**

20. When the payment is authorized, processes the assessment through the Office of Finance for payment.

**804.3 PROCEDURES FOR ACTION INITIATED BY MN/DOT****District Design Engineer or Right of Way Engineer**

1. Forwards a copy of the pertinent plan sheets, cross sections and hydraulic recommendations of the ditch to Director of Land Management. Mark 1/16 lines i.e., N, S, E, or W 1/16 line of sections and government lots; also N-S or E-W quarter lines. Ditch number must be shown on plans before a petition can be prepared. Also forwards copies of correspondence from Ditch Authority or Ditch Engineer relative to established ditch grade elevations at the location of the proposed procedure.

**Director, Office of Land Management**

2. Reviews plans and information with the Legal and Real Estate Conveyance Unit and directs appropriate action.

**Legal and Real Estate Conveyance Unit**

3. Reviews information furnished by the District. Obtain copy of portion of right of way map and other information determined to be necessary. Checks to see that government land designations are shown on each sheet.
4. Prepares a legal description explaining our proposed minor alteration or other procedure.
5. Prepares an exhibit in duplicate from the information from the District and right of way map. The plan sheets should include the following: the title sheet, the estimated quantities sheet, any special detail sheets, all cross section sheets concerning the ditch. The right of way map should indicate the existing ditch alignment and the proposed new alignment.
6. Prepares a file for the individual ditch affected or obtain existing file, if there is one, from the record center. Enters the data as to ditch classification, numerical designation, the county wherein the ditch is situated and the date of receipt of the plans, cross sections and right of way map into ROWIS.
7. Prepares memorandum explaining the reason that a petition, notice and order be prepared. The memorandum must be accompanied by the legal description, a set of the exhibits of the plans, cross sections, and right of way map.
8. Prepares a petition of the Commissioner of Transportation, a suggested form of notice and the order for the County Board of Commissioners. Prepares a letter transmitting the petition, form of notice and exhibit to the County Auditor, requesting that a date of hearing be scheduled.



9. Has Ditch Petition signed by the Director, Office of Land Management. Mails the Petition, form of Notice, Order and exhibits to the County Auditor. Has the transmittal recorded in the ROWIS.

**County Auditor**

10. Advertises for three successive weeks in the designated local newspaper with reference to the Petition of the Commissioner of Transportation and arranges the date of hearing before the Board of County Commissioners or Joint County Ditch Authority. Advises the Director, Office of Land Management of the date of hearing.

**Director, Office of Land Management**

11. Forwards the notice of hearing to the Legal and Real Estate Conveyance Unit with direction for appropriate action.

**Legal and Real Estate Conveyance Unit**

12. Records data of hearing in the ROWIS. Forwards copy of the notice of hearing to the District Engineer or other appropriate district personnel.

**District Engineer (Assistant Attorney General if necessary)**

13. Assigned district personnel attends hearing with an Assistant Attorney General if necessary. Explains the alteration to the Board of County Commissioners or Joint County Ditch Authority.
14. If the Order is signed, district personnel files the order with the County Auditor. Prepares an invoice to cover the expenses of the notice of hearing and filing fees. Prepares memorandum to Director, Office of Land Management advising as to the outcome of the hearing. Copies of the invoice and order go to the Legal and Real Estate Conveyance Unit. (In case the Order is not signed, arranges for continuance of the hearing at a later date.)

**Legal and Real Estate Conveyance Unit**

15. Processes invoice through the Office of Finance for payment. Records date of the signing of the Order in ROWIS.

**District Personnel**

16. Upon completion of the minor alteration arrange for filing of the maps and plans necessary to show the changes made as constructed with the respective County Auditor. If the alteration is actually the same as shown on the maps and plans used as the Exhibit accompanying the petition already on file with the Auditor and sufficiently describes the alteration as constructed and completed as required by MS 161.28 Subd. 1. A letter to the Auditor indicating this information may suffice.

**SPECIAL PROCEDURES (5-491.800)**  
**PERMITS AFFECTING PUBLIC WATERS (5-491.805)**

**805.1 POLICY****A. GENERAL PROVISIONS**

- ! The Commissioner of Transportation may establish, construct and maintain trunk highways into, through, or across any lake and may alter and change the channel of any stream when necessary or expedient in the construction or maintenance of any trunk highway, provided that no such trunk highway improvement affecting public waters shall be made until a permit therefore is issued by the Commissioner of Natural Resources as provided by law.
- ! Minnesota Statutes, Chapter 105 outlines the authority and procedures pertaining to jurisdiction, control and alteration of public and private water. The Commissioner of Natural resources has the authority to grant permits and to waive a hearing previous to issuing his order.

**B. WATERSHED DISTRICTS**

Pursuant to Minnesota Statutes, Chapter 112 MINNESOTA WATERSHED ACT - Watershed districts may be established and shall have the right to: Regulate improvements within the district, regulate construction on the beds, banks and shores of lakes, streams, and marshes by permit or otherwise in order to preserve the same for beneficial use. (M.S.A. 112.36 Subdivision 11); Impose preventive or remedial measures for the control or alleviation of land and soil erosion and siltation of watercourses or bodies of water affected (M.S.A. 112.36 Subdivision 10); Control or alleviation of damages by flood waters (M.S.A. 112.36 Subdivision 1).

**C. "SECTION 10" PERMITS**

Section 10 of the River and Harbor Act of 1899 requires the obtaining of a Section 10 permit from the U.S. Army Corps of Engineers for all work in, over and under navigable water of the United States.

- ! Navigable waters are administratively defined to mean waters that have been used in the past, are now used, or are susceptible to use as a means of transport interstate or foreign commerce up to the head of navigation.
- ! The head of navigation is determined by the Division Engineer for the U.S. Corps of Engineers.

**D. "SECTION 404" PERMITS**

Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500, 86 Stat. 816, 33 USC 1344) requires the obtaining of a Section 404 permit from the U.S. Army Corps of Engineers for work affecting the "waters" of the United States. These waters are administratively defined for inland fresh waters as follows:

- ! The traditional "navigable waters of the United States" including adjacent wetlands.
- ! All tributaries to "navigable waters of the United States" including adjacent wetlands; (man made drainage and irrigation ditches excavated on dry land are not considered "water of the United States" under this definition).
- ! Interstate waters and their tributaries, including adjacent wetlands.

- ! Other waters of the United States, such as isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters the degradation and destruction of which could affect interstate commerce. "Wetlands" are areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and which, under normal circumstances, do support a prevalence of vegetation typically adopted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, wet meadows and similar areas.
- ! Nationwide and general permits are Department of the Army authorizations that allow non-controversial, environmentally insignificant activities to continue with a minimum of government interference. These permits authorize certain structures, discharges, and/or work affecting navigable waters of the U.S. (Section 10) and provides for the discharge of dredge or fill material into minor types of the U.S. (Section 404). These permits include mandatory conditions as to: protection of threatened or endangered species and their habitat; toxic pollutants; erosion; maintenance; and work affecting public water supply intakes, etc..
- ! The Director, Office of Land Management must certify that all permits relative to work affecting public waters have been obtained prior to the letting of any Mn/DOT construction project.

## **805.2 PROCEDURES**

### **District Engineer or designee**

1. Determines permits required.
  - a. All permit applications submitted by District Office directly to the DNR Regional Office, to the respective watershed district office, and the U.S. Army Corps of Engineers main office in St. Paul or their subdivision office if available.

### **DNR, Watershed District, or Corps of Engineers**

2. Process permit application and issue permit if it meets their criteria.

### **District Engineer/or designee**

3. Receives permit, reviews conditions within permit as to acceptability, return and/or negotiate conditions if not acceptable. Advises Legal and Real Estate Conveyance Unit that permit has been issued, arranges for compliance of conditions of permit, distributes copies of permit to Legal and Real Estate Conveyance Unit, and to Resident Engineer, and Special Provisions Unit.

**SPECIAL PROCEDURES (5-491.800)**  
**TRANSFER OF CUSTODIAL CONTROL**  
**BETWEEN STATE DEPARTMENTS (5-491.806)**

**806.1 POLICY**

- I. Minnesota Statutes, Section 15.16 authorizes the transfer of the control of state-owned lands between various departments of state government for public purposes. The state department having such lands under its control and supervision may transfer such lands to another state department, upon such terms as may be mutually agreed upon by the heads of the interested state agencies. (M.S.A., Section 15.16 Subdivision 1) Department of the State are designed pursuant to Minn. Stat., Sect. 15.01.
- II. In advance of completion of construction plans on any state highway project and the acquisition of right of way by transfer of custodial control from the department of state government having control and supervision of the state-owned lands affected, the Director of Right of Way or representative thereof will confer with the head of the division or representative of the other state department involved and furnish complete information on proposed construction plans, right of way widths, access and other plan requirements. Upon approval of the construction plans by the departments of state government and agreement as to right of way and other related matters, determination is made by both state departments as to whether any money consideration is to be considered in the transfer.
- III. In the event the heads of such departments or agencies are unable to agree as to the terms and conditions of a transfer of control of these state lands, the State Executive Council, upon application of the state department having the power to acquire lands for public purposes, shall determine the terms and conditions and may order the transfer of the control of state lands to the department so requesting. (M.S.A., Section 15.16, Subdivision 2).
- IV. No control of state-owned lands shall be transferred between state departments without first consulting the chairs of the senate finance committee and house of representatives appropriations committee and obtaining their recommendations thereon. (M.S.A. Section 15.16, Subdivision 5).
- V. The State Commissioner of Finance and State Treasurer are authorized and directed to transfer funds between state departments and agencies to effect the terms and conditions to transfer the control of real estate as hereinbefore provided. (M.S.A., Section 15.16, Subdivision 3).
- VI. When agreement as to terms and conditions have been reached and acquisition committee recommendation has been obtained, a form of Transfer of Custodial Control is prepared and submitted to the Office of the Attorney General for approval as to form. Upon recommendation of the Director of Right of Way and the Assistant Division Director-Technical Services Division, the agreement is submitted to the Commissioner of Transportation for signature. The transfer is then submitted by cover memo to the head of the State department involved for signature and return. The transfer is then submitted to the Department of Administration for approval. Upon approval by the Office of the Attorney General as to execution, the transfer is submitted to the Department of Administration for processing and filing of the original in the Office of the State Commissioner of Finance. One copy is filed in the Real Estate Management Division, Department of Administration, and one copy is furnished each department involved. (M.S.A. Section 15.16, Subdivision 4.)

**806.2 PROCEDURE****Acquisition Engineer**

1. In accordance with the Direct Purchase Policy (5-491.301) and Procedure (5-491.301.2) send all parcels to be acquired for highway purposes to the Direct Purchase Supervisor.

**Direct Purchase Supervisor**

2. Completes required preliminary processing and transmits all State of Minnesota Parcels to the Special Acquisition Technician.

**Special Acquisition Technician**

3. Reviews parcel file, plans, cross sections, and right of way map. Checks attorney's certificate of title, field report, legal descriptions, conveyance instruments, etc., within the parcel file.
4. Checks parcel file and proposed acquisition in detail and attaches a print of a portion of the right of way map or parcel sketch to a draft of the transfer of custodial control document.
5. Meets with or calls by telephone a representative of the State Department involved to discuss proposed acquisition and determine if they have the control of property, what type of title, if they will transfer the custodial control to the Department of Transportation, and what terms and conditions are agreeable.
6. Determines if the parcel will be acquired by transfer of custodial control (MSA Section 15.16) easement on trust fund lands (MSA Section 84.63) or eminent domain on trust fund lands in fee.
7. If it is determined that acquisition may be by transfer of custodial control, prepares and submits memorandum with signature by the Director of Right of Way addressed to the head of the department involved requesting the transfer of custodial control.

**Department Controlling Land Involved**

8. Replies to the request for transfer of custodial control by memorandum to the Director of Right of Way attention Acquisition Engineer.

**Special Acquisition Technician**

9. Prepares and submits memorandum with signature by the Director of Right of Way to the Department of Administration, Director of Real Estate Management Division requesting appropriate legislative committee recommendation.

**Department of Administration**

10. Obtains legislative committee recommendation and advises Director of Right of Way of the legislative committee recommendation by memorandum.

**Special Acquisition Technician**

11. Obtains approval as to form of the transfer of custodial control documents from the Office of the Attorney General. (If transfer documents were not prepared as noted in Item 4 it may be necessary

to prepare documents prior to obtaining approval as to form.)

12. Submits original and three copies of the transfer of custodial control documents approved as to form by the Office of the Attorney General, recommended for approval by the Director of Right of Way, the Assistant Division Director-Technical Services Division and the Division Director-Technical Services Division, and signed by the Commissioner of Transportation, together with the cover memorandum to the head of the Department having control of the land needed.

#### **Department Controlling Land Involved**

13. Returns the original and three copies of transfer of custodial control documents signed and accompanied by a letter of acceptance or unsigned with a letter of explanation, to the Director of Right of Way, attention Acquisition Engineer.

#### **Acquisition Engineer**

14. Directs Special Acquisition Technician to complete the processing of the transfer of custodial control.

or

- 14a. If the controlling department does not accept the requested transfer of custodial control, seeks to have the land acquired by easement, eminent domain proceedings special act of the legislature, or determination by the State Executive Council.

#### **Special Acquisition Technician**

15. Submits signed transfer of custodial control documents to the Office of the Department of Administration, for the signature of the Director of Real Estate Management Division, and upon return submits the transfer of custodial control documents to the Office of the Attorney General for approval as to execution.

#### **Special Acquisition Technician**

16. Submits fully executed original and three copies of transfer of custodial control documents to the Real Estate Management Division of the Department of Administration for filing of original in the office of the State Commissioner of Finance, filing of one copy in the Real Estate Management Division, Department of Administration, and transmittal of one copy to each copy to each department involved.
17. If funds are involved forwards parcel file to Finance Division of Mn/DOT for transfer of funds and return of file.
18. Forwards the parcel file with one copy of transfer of custodial control document to the Pre-acquisition section for inking the parcel and appropriate caption on the linen copy of the right of way map and return of file.
19. Returns file to Direct Purchase Supervisor.

**SPECIAL PROCEDURES (5-491.800)**  
**PROCEDURES FOR ACQUIRING RIGHT OF WAY FROM**  
**LOCAL GOVERNMENT AGENCIES (5-491.807)**

**807.1 TOWNS OR TOWNSHIPS**

To acquire land by purchase from a town, in addition to a proper deed, a certified copy of a resolution of the town board of supervisors and a certified copy of the minutes of the meeting must be obtained. These copies are certified by the town clerk. The resolution should contain a description of the property to be conveyed to the State, and the consideration to be paid, if any. For a sample resolution with certification, see below. The certified copies should be held in the parcel file along with a copy of the deed. The original of the deed must be recorded in the Office of the County Recorder in which the land is situated.

**SAMPLE RESOLUTION WITH CERTIFICATION**

I hereby certify that at a regular meeting of the Board of Supervisors of the Town of New Canada, in Ramsey County, Minnesota, held at the town hall on April 3, 28, 1982, the following resolution was adopted:

Resolved, by the Board of Supervisors of the Town of New Canada that in consideration of the sum of One Hundred (\$100.00) Dollars to be paid to it by the State of Minnesota, Department of Transportation that the town convey to the State of Minnesota the premises described as follows, to-wit:

The NW 1/4 of the NW 1/4 of the NW 1/4 of the NW /14 of Section 1, Township 14, Range 46.

Dated April 3, 28, 1982

Frank K. Smith  
Clerk of the Town of New Canada

Subscribed and sworn to before  
me this 28<sup>th</sup> day of April 3,, 1982,  
by Frank K. Smith, Clerk of the  
Town of New Canada.

Alice Brown, Notary Public, Ramsey County, Mn.  
My Commission expires: \_\_\_\_\_.

**807.2 CITIES, COUNTIES AND SCHOOL DISTRICTS**

A similar resolution must also be passed by the governing body of a city, county and school district. A copy of the resolution and the minutes of the meeting should be certified by the clerk. The certified copies should be held in the parcel file along with a copy of the deed. The original of the deed must be recorded in the office of the County Recorder in which the land is situated.

**SPECIAL PROCEDURES (5-491.800)**  
**LAND OR INTEREST IN LANDS OWNED BY**  
**THE UNITED STATES OF AMERICA (5-491.808)**

**808.1 AUTHORITY AND PURPOSE**

Pursuant to the provisions of the Federal Highway Act of August 27, 1957 (72 Stat. 916; 23 U.S.C. 107(d) and 317), authorization is given for the transfer of lands or interest in lands owned by the United States to the Minnesota Department of Transportation. These sections authorize the Secretary of the Department of Transportation by authority delegated to the Federal Highway Administrator, to convey lands or rights needed for rights of way, control of access, sources of materials, maintenance and stockpile sites and for roadside and landscape development for any project on the Federal-aid system. Authorization for use and occupancy of Indian Lands is given pursuant to Title 25 of the Code of Federal Regulations, Chapter 1, Bureau of Indian Affairs, Part 169, (25 CFR Part 169). Authorization for rights over lands controlled by Military Departments is found in Section 2668 of Title 10 of the United States Code. Authorization for right of way across lands under jurisdiction of the Veterans Administration is provided for in 38 U.S.C. §8124.

Note:

Under no circumstances does the State have the right to acquire any Federal lands by eminent domain proceedings.

All application for the transfer of federal land, except those involving Bureau of Indian Affairs, the Military Services, and Veterans Administration, should be submitted by the District Right of Way Engineer to FHWA through the Director, Office of Right of Way.

**808.2 APPLICATION FOR TRANSFER OF FEDERAL LANDS**

The State's application for transfer of Federal lands must include the following information and certifications pursuant to guidelines set out in Federal-Aid Policy Guide, Subchapter H, Part 712, Subpart E, Section 712.503, Appendix 1. Additional information may be required pursuant to the regulations of the various federal agencies.

- A. The purpose for which the lands are to be used, i.e., for right-of-way, a maintenance site, source of materials, or other related highway purposes.
- B. The necessary estate or interest in the land required by State statute, i.e., determinable fee, highway easement, right to withdraw borrow materials, access control, etc.
- C. Reference to the Federal-aid project number and Federal-aid system or, when applicable, that the project will be constructed under the provisions of Chapter 2, Title 23 U.S.C. (State's project number alone is not sufficient.)
- D. The name of the Federal agency exercising jurisdiction over the land; identity of the installation or activity in possession of the land; and, if available, a deed reference setting forth the source of title to the Federal agency.
- E. A certification that the applicant agrees that the proposed transfer, if approved, is to be subject to such terms and conditions as may be required by the owning agency.

- F. A state transportation department obligation to construct the highway on or to remove materials from the lands to be transferred, within a period of not more than ten (10) years following the transfer of the lands to the State.
- G. The exact name of the transferee which can legally accept and hold title to the property on behalf of the State transportation department or its nominee, if State law precludes conveyance to said department.
- H. Where the proposed transfer is to be made directly to a nominee of the State transportation department, the latter must submit the application through the State transportation department containing the required certifications.
- I. A statement on compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et. seq.), the Historic Preservation Act (16 U.S.C. 470(f), and Section 4(f) (49 U.S.C. 1653(f)), if applicable.
- J. Seven copies of the map showing the survey of the Federal lands desires for the project.
  - 1. Maps should be printed on paper of convenient size for ready attachment to the deed. If the size exceeds 8-1/2 x 12-1/2 inches, the plat should be folded and mounted on 8-1/2 x 12-1/2 inch paper. Very large or bulky maps may be cut out in sections of suitable size before mounting, or they may be reproduced on a smaller scale, provided the reproduction is clear and legible. The map should show a survey of the land desired, sufficient to enable an engineer or land surveyor to properly locate the land on the ground.
  - 2. To be acceptable, the plat or map must include the following minimal information on all copies:
    - (a) Control of access lines, if applicable, properly identified by appropriate symbol, with necessary legend. Access points should be located by survey station numbers between which access is permitted.
    - (b) The area to be transferred outlined in red.
    - (c) The acreage or square footage contained in each tract. If feasible, area of very small parcels may be shown in square feet only.
    - (d) Tract number assigned to each parcel.
    - (e) Section lines and section numbers, if applicable.
    - (f) Name of State and county wherein land is located.
    - (g) Citation to Federal-aid project number.
    - (h) Terminal and lateral limits of the project.
- K. A legal description of the lands desired.
- L. Seven copies of the proposed deed for conveyance of lands or interest in lands owned by the United States. Descriptions appearing in the deed should be prepared by the local or State agency and checked for accuracy. The proposed form of deed should also be prepared by the local or State agency, if practicable, and reviewed by an attorney for form and content.

- M. If immediate right of entry is necessary prior to transfer of Federal Land this request must also accompany the submittal to the Director, Office of Land Management. The Federal Highway Administration will then respond to this particular request.
- N. The agency controlling the land is required under the provisions of the law to notify the applicant within four months as to the approval or disapproval of the States application.
- O. In those cases where the conveyance is subject to certain terms and conditions imposed upon the transfer by the controlling agency, then the State shall request the Division office of the Federal Highway Administration to prepare an acknowledgment that the conditions have been met.
- P. Any deed or easement from the United States shall be recorded in the Office of the County Recorder in which the land is situated. The Division Office of the Federal Highway Administration must be given two copies of the deed or easement showing the recording data.

### **808.3 BUREAU OF INDIAN AFFAIRS - APPLY DIRECTLY TO THE AGENCY**

The Bureau of Indian Affairs has supervision over applications for construction across Indian lands. All applications for use and occupancy of Indian lands should be submitted by the Central Office to the Secretary of the Interior or his authorized representative acting under delegated authority. Inquiry should be made at the Indian Agency Area Field Office, or other office of the Bureau of Indian Affairs having immediate supervision over the lands involved to determine the identity of the authorized representative of the Secretary. This application must be in accordance with the regulations of the Bureau of Indian Affairs as outlined in Title 25 of the Code of Federal Regulations, Chapter I - Bureau of Indian Affairs Part 169 (25 CFR Part 169).

### **808.4 U.S. MILITARY DEPARTMENTS - APPLY DIRECTLY TO THE AGENCY**

- A. Applications for rights over lands controlled by the Military departments are made to the Secretary of a Military Department. Requests are made in accordance with Section 2668 of Title 10 of the United States Code (10 U.S.C. 2668). It is considered preferable for the State Transportation Department to apply directly through military channels.
- C Applications affecting Army and Air Force lands should be sent to the installation commander and to the District Engineer of the U.S. Army Corps of Engineers.
- C Applications affecting to lands controlled by the Navy should be sent to the District Public Works Officer of the Navy District involved.
- B. In connection with the transfer of right of way across lands under jurisdiction of the military departments, involving limited access roads for the Interstate System, a standard form of easement has been adopted by the three military departments.

### **808.5 VETERANS ADMINISTRATION - APPLY DIRECTLY TO AGENCY**

Application for right of way across lands under jurisdiction of the Veterans Administration should be made pursuant to the provisions of 38 U.S.C. §8124. Applications should be directed to the Administrator, Veterans Affairs, Washington, D.C.

### **808.6 RECORDING**

Any deed or easement from the United States must be recorded in the Office of the County Recorder in which the land is situated.

#### **808.7 LAND TRANSFERS REQUESTED BY COUNTIES**

These are handled in a manner similar to transfers to the State. Field work and preparation of all exhibits are conducted by the county. All requests are to be submitted through the District State Aid Engineer to the Central Office, St. Paul, Office of Land Management, for review and submittal to the required federal agency.

**SPECIAL PROCEDURES (5-491.800)**  
**DONATIONS OF REAL PROPERTY FOR RIGHT OF WAY (5-491.809)**

**809.1 APPRAISAL OF DONATIONS**

An owner whose real property is being acquired may, after being informed of the right to receive just compensation, donate such real property or any interest therein to the state. The state is responsible for assuring that an appraisal (or Minimum Damage Acquisition estimate as appropriate) of the real property affected is obtained unless the owner releases the state from such obligation. Pursuant to Minnesota Statute §161.20 Subd. 2, the Commissioner of Transportation “is authorized to acquire by purchase, gift or by eminent domain.”

**809.2 QUALIFIED APPRAISER EXCLUSIONS**

In many instances property owners will claim the donation as a charitable contribution on their Federal income tax return. The Internal Revenue Service regulations exclude certain persons from qualifying as appraisers on deductions in excess of \$5,000 claimed as charitable contributions of property. This regulation excludes Mn/DOT staff appraisers from making these appraisals for the donor. A qualified fee appraiser may be utilized provided that the acquiring agency is not the sole client of the fee appraiser.

**LIMITED USE PERMITS (5-491.810)****810.1 POLICY****A. AUTHORITY**

Minnesota Statutes, Section 161.434, gives the Commissioner of Transportation authority to issue permits for the limited use of highway right of way;

*161.434 INTERSTATE AND TRUNK HIGHWAY RIGHTS-OF-WAY; LIMITED USE.*

*The commissioner may also make such arrangements and agreements as the commissioner deems necessary in the public interest for the limited use of land owned as interstate or trunk highway right-of-way, which use shall be for highway purposes, including aesthetic purposes, but not including the erection of permanent buildings, except buildings or structures erected for the purpose of providing information to travelers through commercial and public service advertising pursuant to franchise agreements as provided in sections 160.276 to 160.278. The commissioner shall secure the approval of the appropriate federal agency where such approval is required.*

**B. TRANSPORTATION DISTRICT ENGINEER**

The granting of a limited use permit is discretionary with the Transportation District Engineer. The Transportation District Engineer will decide whether the proposed use is "in the public interest" and is "for highway purposes," and, additionally, whether the proposed use is such that Mn/DOT should accommodate it by issuing a limited use permit.

**C. USE OF LIMITED USE PERMITS**

This Chapter applies to preparation and execution of limited use permits by the Office of Land Management. It does not apply to the various construction, maintenance, and utility installation permits which are regularly issued by District Maintenance Operations. These District Office permits typically have a term only long enough for the permit grantee to accomplish the specific work or activity on the right of way.

A prior requirement in the Minnesota Statutes 161.434 of allowing a permit to only a "governmental authority, political subdivision, or public agency" was removed by the Legislature. However the practice of the Office of Land Management has been to issue these permits on the right of way to only governmental bodies to avoid private parties competing for them, to receive some degree of financial security in the form of hold harmless clauses and to further our "partnering" effort with the local public agencies.

While Minnesota Statutes 161.434 pertains to surface usage, 161.433 allows limited use permits to be issued for use of highway airspace or subsurface. Structures may be erected. Consideration is required. This section may be used for pedestrian bridges.

**810.2 FHWA INVOLVEMENT****A. ENVIRONMENTAL REQUIREMENTS**

The National Environmental Policies Act (NEPA) requires that environmental consequences be evaluated whenever a Federal approval is required.



For reconveyances, temporary use permits, and access control changes, which have little or no impact on the environment, this was satisfied by the Programmatic Environmental Assessment (EA) prepared by Mn/DOT and the Finding of No Significant Impact (FONSI) issued by FHWA on May 18, 1984. "Little or no impact on the environment" means the proposed action will not affect an environmentally sensitive area, such as a wetland, floodplain, archeological or historical site, or critical habitat for rare or threatened and endangered species. By issuing the FONSI, the FHWA has determined, in advance, that these types of actions will not significantly impact the environment. For actions which do involve environmentally sensitive areas, and therefore do not fall under the above-mentioned EA and FONSI, an environmental analysis must be made of the proposed action by Mn/DOT and concurred in by FHWA. Environmental analysis approval by the FHWA applies to projects on the entire trunk highway system.

#### B. APPROVAL OF LIMITED USE PERMIT

The Transportation Equity Act for the 21<sup>st</sup> Century 1998 (TEA-21) allows FHWA approval actions to be delegated to Mn/DOT. Under this program, FHWA has delegated to Mn/DOT approval action for limited use permits on Federal-aid highways other than interstate highways on the National Highway System.

#### C. CORRESPONDENCE WITH FHWA

FHWA approval is needed for Mn/DOT action in the following categories:

- ! Limited use permits on interstate highways on the National Highway System.
- ! Limited use permits which do not fall within the 1984 FONSI (e.g., the proposed action is environmentally sensitive). An environmental analysis must be made by Mn/DOT, and FHWA concurrence in the environmental analysis is required.

### 810.3 PROCEDURE

#### Transportation District Engineer

1. Ascertain need for issuance of Limited Use Permit
2. Obtains necessary information and prepares permit in rough draft for transmittal to Director, Office of Land Management for review prior to execution. The permit can also be prepared by the Central Office if necessary information is supplied by the District Office.
3. The District Transportation Engineer's letter to the Director must contain the following information.
  - a. The issuance of the Limited Use Permit will result in no increased hazard to the safety and convenience of the traveling public; and, the use of such permit will not adversely affect the highway facility or the traffic thereon.
  - b. The issuance of the Limited Use Permit will not substantially lessen the beauty of the area as seen by the highway motorist.
  - c. The issuance of the Limited Use Permit will not result in increased noise to adjacent noise-sensitive areas.
  - d. Traffic will be maintained and protected in conformance with the National Manual on Uniform Traffic Control Devices (MUTCD).

- e. The issuance of the Limited Use Permit will not affect lands given special protection under laws outside Title 23, such as wetlands, flood plains, sites on or eligible for the "National Register of Historic Places," critical habitat, etc. If approval of the permit would impact such lands, required actions will be taken and the permit submitted to FHWA approval.
  - f. Maps showing the permit area and surroundings.
  - g. Background information and copies of letters, etc., which would aid in understanding the setting for the proposed limited use permit.
  - h. An affirmative statement that the proposed action falls under the 1984 FONSI. If it does not, an environmental analysis prepared for the proposed action must be included.
4. Reviews and recommends approval of the permit and obtains the signatures of the Permittee, including a certified resolution authorizing the governmental body to enter into the limited use permit and authorizing the specific officers to execute it. District Office returns those three copies to Office of Land Management.

#### **Legal and Real Estate Conveyance Unit**

5. Reviews or prepares permit and obtains FHWA approval if required.
6. Director, Office of Land Management reviews, executes and forwards two copies of the permit to District Engineer.
7. Retains one signed copy for Office of Land Management files.

**SPECIAL PROCEDURES (5-491-800)**  
**LICENSED REAL ESTATE BROKER**

**811.1 POLICY****A. AUTHORIZATION:**

Pursuant to Minn. Stat. §161.23 and §161.44 the Commissioner of Transportation may retain the services of a licensed real estate broker to sell for its surplus right of way.

**B. REQUIREMENTS:**

If the lands remain unsold after being offered for sale to the highest bidder, the commissioner may retain the services of a licensed real estate broker to find a buyer. The sale price may be negotiated by the broker, but must not be less than 90 percent of the appraised market value as determined by the commissioner. The broker's fee must be established by prior agreement between the commissioner and the broker, and must not exceed ten percent of the sale price for sales of \$10,000 or more. The broker's fee must be paid to the broker from the proceeds of the sale.

**C. AGREEMENTS:**

Agreement must provide the following information:

1. Parcel number, location, structures on property.
2. Special reservations, restrictions or conditions relating to the conveyance that will become conditions written in deed.
3. Permission granted for broker to place or erect FOR SALE sign on property.
4. Mn/DOT to approve and accept offer by buyer prior to issuance of a deed.
5. Approval of such offer shall be made by the Director, Office of Land Management.
6. Broker to comply with National Association of Realtors Code of Ethics and Standards of Practice.
7. Broker to be given exclusive right to sell the property.
8. Agreement to remain in effect for 6 months with the State's option to renew the agreement for an additional 6 months.
9. Broker may disclose, within 10 days after expiration date of agreement, a written list of perspective buyers. Sale to them within 6 months after expiration date of agreement will result in commission payable to broker.

**811.2 PROCEDURES****Property Management Unit**

1. Makes a declaration that excess or surplus right of way, for a particular parcel, has previously been placed on bids without success.
2. Obtains the services of a licensed real estate broker.
3. Prepares and processes an agreement with the licensed real estate broker in terms as recited in 811.2, A and B.
4. Upon execution of the agreement, submits all the required information to the selected broker, with special instruction when necessary.



**Licensed Broker**

5. Upon receiving an offer for the sale of state property the broker must receive approval for such sale from the Director, Office of Land Management.
6. Upon approval of sale, broker submits payment, less agreed amount of broker's fee from sale, to Property Management Unit.

**Legal and Real Estate Conveyance Unit**

7. Submits payment to Finance Section with coding form and instruction to deposit into Trunk Highway Fund.
8. Prepares quitclaim deed in duplicate for the Commissioner of Transportation conveying the property to the buyer.
9. Forwards two copies of the quitclaim deed and a copy of right of way map to the Director of the Office of Land Management for execution.

**Director, Office of Land Management.**

10. Executes both copies of quitclaim deed on behalf of State.

**Legal and Real Estate Conveyance Unit**

11. Secures Attorney General's approval as to form and execution of quitclaim deed.
12. Prepares letter transmitting original of the quitclaim deed to the party receiving the conveyance with instructions to have the deed filed in the office of the County Recorder.
13. Requests the Mapping Unit to amend the right of way map and the Commissioner's Orders in accordance with the quit claim deed.
14. Completes Office of Land Management records of the conveyance action.

**Finance Section**

15. Notifies FHWA of credit to Federal Funds, if applicable.

**SPECIAL PROCEDURES (5-491.800)**  
**LAND EXCHANGES (5-491.812)**

**812.1 POLICY**

All land exchanges involving public lands of the State must be approved by the Land Exchange Board. The Land Exchange Board was created by the Minnesota state constitution, Article XI, Section 10 and consists of the governor, the attorney general and the state auditor.

*Sec. 10. EXCHANGE OF PUBLIC LANDS; RESERVATION OF RIGHTS. As the legislature may provide, any of the public lands of the state, including lands held in trust for any purpose, may be exchanged for any publicly or privately held lands with the unanimous approval of the governor, the attorney general and the state auditor. Lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject. The state shall reserve all mineral and water power rights in lands transferred by the state. [Amended, November 6, 1984]*

Minnesota Statutes §94.341 directs the approval process of the Land Exchange Board:

*§94.341 MINNESOTA LAND EXCHANGE BOARD. The board created by the constitution of the state of Minnesota, article XI, section 10, consisting of the governor, the attorney general, and the state auditor, shall be known as the Minnesota land exchange board. The term "board" as used in sections 94.341 to 94.347 refers to such board. The governor shall be chair of the board. The state auditor shall be secretary of the board and keep a record of its proceedings. Approvals of land exchanges and other official acts of the board may be evidenced by the certificate of the state auditor as secretary, under official seal of the auditor. When a land exchange has been approved by the board it shall be presumed that all other pertinent requirements of the law have been complied with, and no exchange shall be invalidated by reason of any defect or omission in respect of any such other requirement. HIST: 1941 c 393 s 1; 1965 c 51 s 15; 1975 c 271 s 6; 1976 c 2 s 172; 1986 c 444*

This is the approval process. The state agency must have authority to make the conveyance in the first place. Department of Transportation conveyances are generally covered by Minnesota §161.23, §161.43 and §161.44. The grantee must be eligible under the applicable statute.

Two additional statutes allow the conveyance of replacement lands. §161.202 deals with the replacement of public lands. This statute calls for “a functional replacement” to be accomplished by the State pursuant to agreement by:

- 1.) reimbursing the affected agency for acquiring replacement lands,
- 2.) making a lump sum settlement or
- 3.) acquiring the lands and conveying it to the affected agency.

Item number 3 appears to be a land exchange.

*Minn. Stat. §161.202 Replacement of public lands.*

*Subdivision 1. Definitions. For the purposes of this section the following terms shall have the meanings ascribed to them:*

- (1) "Public lands" means any lands, except streets, roads, or bridges owned by any subdivision of government, including but not limited to, the property of school districts, however organized, towns, cities, municipalities, counties, and any board or commission of any thereof, and public corporations created by the laws of this state.
- (2) "Affected agency" means any governing body of any subdivision of government which owns public lands, and shall include any agency, board, or commission charged with the administration of such lands.
- (3) "Cost of replacement" means the amount paid by any affected agency to purchase and develop lands to replace public lands acquired for the purpose of constructing or improving trunk highways.

*Subd. 2. Replacement of acquired public lands. Whenever it has been determined that the commissioner of transportation is to acquire any public lands for the construction or improvement of a federally aided state trunk highway, including urban extensions thereof, the commissioner may, and in the case of parks shall, upon the request of the affected agency, authorize the affected agency to replace the same within a reasonable time by gift, purchase, or condemnation if granted the power of eminent domain by law. The replacement lands to be acquired by the affected agency shall be designated in an agreement entered into between any affected agencies and the commissioner. Such replacement lands shall be a functional replacement which shall consist of but not be limited to land substantially equal in acreage, use, interest, or estate in the lands to be acquired from the affected agency. If the parties are unable to agree on the designation of the replacement lands, the parties may agree to submit to an arbiter or the district court the issue of which replacement lands proposed by the parties is a functional replacement for the lands to be acquired from the affected agency. After the completion of the acquisition of the replacement lands by the affected agency the cost of replacement shall be ascertained and paid by the state from any funds available for the acquisition of lands.*

*Subd. 3. Lump sum settlements. The commissioner of transportation may enter into agreements with an affected agency for the replacement of public lands providing for the payment by the state of a lump sum based on the estimated cost of replacement when the lump sum so agreed upon, which shall be irrevocable, does not exceed \$50,000.*

*Subd. 4. Acquiring replacement lands for affected agency. When the affected agency is unable to acquire the replacement lands, or if the acquisition of such lands by the affected agency would result in undue delay in the completion of the highway project, upon a request of an affected agency which shall include a recommendation as to the replacement land to be acquired within its jurisdiction, the commissioner of transportation by gift, purchase, or condemnation proceedings, may acquire the designated replacement lands if the commissioner deems that the acquisition would reduce the cost to the state of the highway project and would otherwise be in the public interest. The affected agency shall relinquish to the commissioner its interests in the lands required for the highway project upon its completion of the acquisition of the replacement lands or upon conveyance by the commissioner to the affected agency of the replacement lands designated in the agreement between the affected agency and the commissioner. The commissioner shall convey the lands or interests designated in the agreement to the affected agency.*

*Subd. 5. Compensation for damage to improvements. The affected agency, unless otherwise provided for in the agreement, by the acceptance of the replacement lands, shall not be deemed to have waived its right to compensation for the total of the damage to improvements.*

*HIST: 1969 c 968 s 1; 1973 c 123 art 5 s 7; 1976 c 166 s 7; 1983 c 143 s 2; 1986 c 444*

§161.24 deals with the relocation of railroad tracks and the acquisition of land for such relocation. Some land owned by the railroad must be needed by the State. The State may, pursuant to agreement:

- 1.) acquire the needed replacement lands or
- 2.) convey lands already owned for trunk highway purposes.

The statute in Subd. 2 refers to the transaction as an "exchange of land."

*Minn. Stat. §161.241 Relocation of railroad tracks, acquisition of land.*

*Subdivision 1. Acquisition. Whenever the construction, reconstruction, or improvement of a trunk highway will require the acquisition by the state of lands or interests in lands owned by a railroad company, and will require the railroad company to relocate its tracks in order to provide right-of-way for the trunk highway, the commissioner of transportation may acquire, by purchase, gift, or eminent domain proceedings, the lands or interests in lands necessary for the relocation of such tracks. Such acquisition is deemed to be for a trunk highway purpose.*

*Subd. 2. Agreement. The lands to be acquired from the railroad company, and the lands necessary for the relocation of the railroad tracks to be acquired by the state, shall be described in a voluntary agreement between the railroad company and the commissioner. Such agreement shall set forth the consideration to be paid for the lands involved. The consideration may be an even exchange of land if the market value is equal, or there may be money payment or services to be rendered by one party or the other to the agreement in addition to the exchange of land, depending on the relative market values of the lands involved. Any money paid to the state shall be credited to the trunk highway fund.*

*Subd. 3. Form of conveyance. The commissioner shall convey to the railroad company, by quit claim deed, lands or interests in lands acquired by the state pursuant to the provisions of subdivisions 1 to 3.*

*Subd. 4. Highway lands no longer needed. The commissioner shall convey to a railroad company, by quitclaim deed, lands owned by the state in fee for trunk highway purposes, but no longer needed for such purposes, when the lands are needed by a railroad company for the relocation of its tracks which is required by the construction, reconstruction, or improvement of a trunk highway. The consideration must be set forth in a voluntary agreement between the railroad company and the commissioner of transportation and must be as provided in subdivision 2.*

*Subd. 5. Repealed, 1976 c 163 s 63*

*HIST: 1963 c 704 s 1-3; 1976 c 166 s 7; 1983 c 143 s 3,4*

In other cases, special legislation may be required for the Department to convey to proposed grantee. This includes conveyances to the United States of America. After passage of the appropriate legislation, approval of the Land Exchange Board must be obtained.

The opening and closing of access openings is not a land exchange. This release of a negative easement is not a conveyance of land.

Transfers of custodial control between state agencies or departments do not require Land Exchange Board approval. The State remains the fee owner in such transactions.

## **812.2 PROCEDURE**

1. The Land Exchange Board usually meets quarterly. The Department of Natural Resources provides the administrative support for the Land Exchange Board. If we wish to complete a land exchange we must contact the Department of Natural Resources at least one month prior to the Land Exchange Board's, quarterly meeting to be placed on the board agenda. Supporting documentation should be provided. The board members should be briefed on the transaction before the meeting.
2. If a land exchange is required, the District Right of Way Engineer shall advise the Director, Office of Land Management.
3. The acquisition and conveyance portions of the transactions must both first go through the department's approval process.

**SPECIAL PROCEDURES (5-491.800)**  
**MN/DOT OWNERSHIP OF OCCUPIED**  
**T.H. RIGHT OF WAY (5-491.813)**

**813.1 POLICY**

The right of way that is occupied and/or monumented represents the property that was viewed, appraised, to which rights were acquired, and is the property that the Department will claim. This assumption should be followed for ALL requests to stake right of way purchased by centerline descriptions.

In the case where the description of record does not fit the occupied right of way, the Minnesota Department of Transportation will rectify the description of record by the necessary means to make it conform to the right of way as occupied and/or monumented.

Property which has been acquired by Mn/DOT but, because of survey errors or other reasons, is not occupied may become land no longer needed for trunk highway purposes and falls within the requirements of Minn. Stat. §161.44 (1998) for further disposition.

Also, Mn/DOT is obligated to pay fair market value for properties which it acquires unless it acquires that property by the six-year continued use and maintenance statute, Minn. Stat. §160.05 (1998).

Each particular instance of property occupancy/ownership may present unique circumstances for ultimate correction or resolution. Reference should be made to appropriate sections in this Right of Way Manual pertaining to Titles, Deeds, Legal Descriptions and Reconveyances.

NOTE: Consultation with the office of the Attorney General may be advisable on any contested ownership cases.

**813.2 PROCEDURE****District Land Management/Right of Way Engineer**

1. Cases initiated by outside/non-state interests requiring property ownership, legal descriptions or occupancy rectification shall be fully investigated and documented by the District/Division Staff to Districts Land Management/Right of Way Engineers satisfaction.
2. Reviews facts regarding property occupancy/ownership and any outside interest requests.
3. Determines what corrective action (if any) such as legal description changes, deeds or reconveyances should be initiated.
4. Sends correction request "package" with all pertinent background information to Project Coordination and Finance Unit.

**Project Coordination and Finance Unit**

1. Reviews file, and makes determination as to recommended course of action.
2. Sends recommendation to Director, Office of Land Management.

**Director, Office of Land Management**

1. Reviews file and recommendations of the District and C.O. Project Coordination and Finance.
2. Consults with Attorney Generals staff as appropriate.
3. Returns approval or disapproval to Project Coordination and Finance to implement in compliance with Right of Way Acquisition Policies and Procedures for titles, deeds, legal description and reconveyances, etc.

**Project Coordination and Finance**

1. Coordinates actions required between District and Central Office Units.

**SPECIAL PROCEDURES (5-491.800)**  
**CONVEYANCE OF RAIL BANK PROPERTY (5-491.814)**

**814.1 POLICY**

Conveyance or lease of State Rail Bank Property shall be in conformance with Minn. Stat. Chapter 222.63, subd. 4.

**A) Legislative Authorization:***Subd.4. Disposition permitted.*

(a) *The commissioner may lease any rail line or right-of-way held in the state rail bank or enter into an agreement with any person for the operation of any rail line or right-of-way for any of the purposes set forth in subdivision 2 in accordance with a fee schedule to be developed by the commissioner.*

(b) *The commissioner may convey any rail line or right-of-way, for consideration or for no consideration and upon other terms as the commissioner may determine to be in the public interest, to any other state agency or to a governmental subdivision of the state having power by law to utilize it for any of the purposes as set forth in subdivision 2.*

(c) *the commissioner may convey a portion of previously acquired rail bank right-of-way to a state agency or governmental subdivision when the commissioner determines that:*

*(1) the portion to be conveyed is in excess of that needed for the purposes stated in subdivision 2;*

*(2) the conveyance is upon terms and conditions agreed upon by both the commissioner and the state agency or governmental subdivision;*

*(3) after the sale, the rail bank corridor will continue to meet the future public and commercial transportation and transmission needs of the state; and*

*(4) the conveyance will not reduce the width of the rail bank corridor to less than 50 feet. Proceeds from a sale shall be deposited in the rail bank maintenance account described in subdivision 8.*

**B) Eligibility Requirements:**

! Conveyance requirements under subd. 4(b) require a public agency or governmental subdivision to utilize the Rail Bank for purposes set forth in Minn Statutes 222.63 subd.2 (below).

! Conveyance requirements under subd. 4(c) address rail bank right-of-way to public agencies or governmental subdivision in excess of what is needed for purposes stated in subd.2 (below).

! Conveyances may not be made to private parties.

*Subd.2. Purpose.*

*A state rail bank shall be established for the acquisition and preservation of abandoned rail lines and rights of way, and of rail lines and rights of way proposed for abandonment in a railroad company's system diagram map, for future public use including trail use, or for disposition for commercial use in serving the public, by providing transportation of persons or freight or transmission of energy, fuel, or other commodities. Abandoned rail lines and rights of way may be acquired for trail use by another state agency or department or by a political subdivision only if (1) no future commercial transportation use is identified by the commissioner, and (2) the commissioner and the owner of the abandoned rail line have not entered into or are not conducting good-faith negotiations for acquisition of the property.*

### C) Consideration Requirements

Consideration requirements are left open to allow for the review of each transaction's unique circumstances. The law states as follows:

*subd.4(b) "... for consideration or for no consideration and upon such other terms as the commissioner may determine to be in the public interest..."*

*subd.4(c)(1) "The conveyance is upon such terms and conditions agreed upon by both the Commissioner and the state agency or governmental subdivision";*

### D) Compensation General Guidelines

Although compensation is open to each transactions unique circumstances the following guidelines shall be utilized by the Districts to maintain some uniformity in establishing terms and conditions of rail bank sale/transfer.

- 1) Minimum amount for all transactions

(\$300 fee).

- 2) Rail bank is transferred for purposes set forth in subd.2 and/or is in the best interest of the State, i.e., tangible benefits, reduction of costs or avoidance of maintenance, etc.,

(minimal fee of \$300 up to prorated amount paid by State for Rail bank Corridor).

- 3) Property is no longer needed but is not transferred for purposes set forth in subd.2 or of benefit to the state,

(\$300 minimum fee plus current appraised market value).

### E) Leases - General

Lease of state rail bank (subd.4(a) must be for the purposes set forth in subd.2. (above) and in accordance with the Office of Land Management's current fee schedule or formula for determining lease fees.

## 814.2 PROCEDURE

### District Right of Way (Land Management) Engineer

1. Reviews any requested conveyance, consults with Office of Freight Railroad and Waterways and provides package (documentation) with recommendations to District Engineer for approval.

### District Engineer

2. Approves or disapproves of conveyance recommendation.
3. Sends recommendation to Project Coordination and Finance Unit C.O. with package for final processing.

**Project Coordination and Finance Unit - Central Office**

4. Processes request using generally the same procedures in Right of Way Manual as other "reconveyances".
5. Notifies all appropriate parties to the transaction including the Office of Freight Railroad and Waterways.

NOTE: 1) 222.63 subd.3 has special public notice requirements requiring publicity in the State Register, and also at least one newspaper of general circulation in each area where the right-of-way is located.

2) 222.63 subd.8 requires establishment of a rail bank account to which all proceeds from sales or leases are to be deposited using established MN/DOT accounting procedures.